CODE OF VIRGINIA

Title 54.1

Professions and Occupations

Title 54.1 - PROFESSIONS AND OCCUPATIONS

Subtitle I - GENERAL PROVISIONS RELATING TO REGULATORY BOARDS

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 (i) it is clearly found that such abridgment is necessary for the protection or preservation of the health, safety, and welfare of the public and (ii) any such abridgment is no greater than necessary to protect or preserve the public health, safety, and welfare.

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.

1979, c. 408, § 54-1.17; 1988, c. 765; 2016, c. 467.

§ 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.

1993, c. 499 .

§ 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.

Code 1950, § 54-1; 1952, c. 227; 1959, Ex. Sess., c. 94; 1960, c. 10; 1962, c. 13; 1970, c. 623; 1973, c. 284; 1985, c. 448; 1988, c. 765; 1993, c. 499 .

§ 54.1-101.1. Certified mail; subsequent mail or notices may be sent by regular mail

Whenever in this title any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by any such regulatory board may be sent by regular mail.

2011, c. 566.

§ 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;

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. For any person to use, disclose or release any questions intended to be used by the board or body conducting the examination, or to release the answers to the questions, beyond the scope specifically authorized by the board or body; or

5. 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.

Code 1950, §§ 54-1.1, 54-1.2; 1988, c. 765; 2012, c. 416.

§ 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.

1979, c. 408, § 54-1.28; 1983, c. 569; 1988, c. 765; 1990, c. 194; 1993, c. 499 .

§ 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 (§ 2.2-4000 et seq.).

1980, c. 433, § 54-1.2:1; 1988, c. 765; 1993, c. 499 .

§ 54.1-105. Majority of board or panel required to suspend or revoke license, certificate, registration, or multistate licensure privilege; 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, registration, or multistate licensure privilege to practice nursing 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.

1988, c. 765; 1992, c. 659; 2004, c. 49.

§ 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; Counseling; Dentistry; Medicine; Nursing; Optometry; Opticians; Pharmacy; Hearing Aid Specialists; Psychology; or Social Work or who holds a multistate licensure privilege to practice nursing issued by the Board of Nursing who renders at any site any health care services within the limits of his license, certification or licensure privilege, 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 or any clinic for the indigent and uninsured that is organized for the delivery of primary health care services as a federally qualified health center designated by the Centers for Medicare & Medicaid Services, 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 shall be deemed to be licensed pursuant to this title.

B. For the purposes of Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, 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 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, "delivery of health care services without charge" shall be deemed to include the delivery of dental,

medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

1983, c. 25, § 54-1.2:2; 1988, c. 765; 1989, c. 159; 1992, cc. 414, 706; 1995, cc. 509, 531; 1996, c. 748; 1999, c. 834; 2000, cc. 473, 618, 632; 2004, c. 49; 2010, c. 353.

§ 54.1-106.1. Notification to licensees of the Board of Medicine about immunity for health care services to patients of free clinics

The Board of Medicine shall provide to its licensees a full description of the protection from civil liability established pursuant to § 54.1-106. Such description shall explain the coverage available under the Division of Risk Management pursuant to subsection B of § 54.1-106.

2005, c. 134.

§ 54.1-107. (Effective until October 1, 2016) 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 § 2.2-108. 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.

1981, c. 447, § 54-1.18:1; 1988, cc. 42, 765.

§ 54.1-107. (Effective October 1, 2016) 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 A of § 2.2-108. 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.

1981, c. 447, § 54-1.18:1; 1988, cc. 42, 765.

§ 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 (§ 2.2-3700 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.

1979, c. 408, § 54-1.41; 1982, c. 207; 1988, c. 765; 1993, c. 499 .

§ 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 (§ 2.2-4000 et seq.).

1979, c. 408, § 54-1.19; 1988, c. 765; 1992, c. 659; 1993, c. 499 .

§ 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 (§ 2.2-4000 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.

1979, c. 408, § 54-1.37; 1986, c. 615; 1988, c. 765; 1992, c. 659 .

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

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 36-month period shall constitute a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivision 1 through 8 of this subsection, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation, may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

B. In addition to the criminal penalties provided for in subsection A, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to

enforce the provisions of subsection A 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 and to recover a civil penalty of at least $200 but not more than $5,000 per violation, with each unlawful act constituting a separate violation; but in no event shall the civil penalties against any one person, partnership, corporation or other entity exceed $25,000 per year. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit court or general district 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, in accordance with subsections A and B of § 8.01-413 or subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

D. Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be construed to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which employs or contracts with an individual licensed by a health regulatory board, from (i) practicing or engaging in the practice of a profession or occupation for which such individual is licensed, (ii) providing or rendering professional services related thereto through the licensed individual, or (iii) having a legitimate interest in enforcing the terms of employment or its contract with the licensed individual.

E. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege to practice nursing in the Commonwealth of Virginia.

1979, c. 408, § 54-1.20; 1988, c. 765; 1993, cc. 129, 499; 1998, c. 470; 2001, c. 544; 2003, cc. 753, 762; 2004, c. 49; 2005, cc. 398, 642, 697; 2008, c. 358.

§ 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.

1988, c. 765; 1993, c. 499 .

§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of health regulatory boards prohibited

A. 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.

B. Nongeneral funds generated by fees collected on behalf of the health regulatory boards and accounted for and deposited into a special fund by the Director of the Department of Health Professions shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and Board of Health Professions and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2.

1981, c. 558, § 54-1.28:1; 1988, c. 765; 1993, c. 499; 2006, c. 631; 2009, c. 472.

§ 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.

1985, c. 537, § 54-1.2:3; 1988, c. 765; 1993, c. 499; 1998, c. 744; 2004, c. 650.

§ 54.1-115. Expired

Expired.

§ 54.1-116. Applicants to include social security numbers, or other identifying number; exemption

A. 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.

B. Notwithstanding the provisions of subsection A, a health regulatory board of the Department of Health Professions may issue a temporary license or authorization to practice, effective for not longer than 90 days, to an otherwise qualified applicant for a license, certificate or registration

who is a foreign national and cannot provide a social security number or control number at the time of application.

1997, cc. 794, 898; 2003, c. 803.

§ 54.1-117. Expiration of documents issued to persons in diplomatic service and the armed services of the United States

Notwithstanding any contrary provision of law, any license, permit, certificate, or other document, however styled or denominated, that is related to the practice of any business, profession, or calling and issued under this title to any citizen of the Commonwealth shall be held not to have expired during the period of such person's service outside the United States, in the armed services of the United States or as a member of the diplomatic service of the United States, appointed under the Foreign Service Act of 1946, serving outside the United States and 60 days thereafter. However, no extension granted under this section shall exceed five years from the date of expiration of the document. The provisions of this section shall apply to the spouse of a member of the armed services of the United States if the spouse accompanies the member during periods of service outside of the United States.

For the purposes of this section "service in the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

2004, c. 975; 2011, cc. 342, 357.

§ 54.1-118. Qualifications for licensure, etc; substantially equivalent military training and education

A. Except as provided in this section, the regulatory boards within the Department of Professional and Occupational Regulation, the Department of Health Professions, or any board named in this title shall accept the military training, education, or experience of a service member honorably discharged from active military service in the armed forces of the United States, to the extent that such training, education, or experience is substantially equivalent to the requirements established by law and regulations of the respective board for the issuance of any license, permit, certificate, or other document, however styled or denominated, required for the practice of any business, profession, or occupation in the Commonwealth. To the extent that the service member's military training, education, or experience, or portion thereof, is not deemed substantially equivalent, the respective board shall credit whatever portion of the military training, education, or experience that is substantially equivalent toward meeting the requirements for the issuance of the license, permit, certificate, or other document.

The provisions of this subsection shall not apply to the Board of Medicine in the regulation of the practice of medicine or osteopathic medicine. Nor shall this subsection apply to the Board of Dentistry in the regulation of dentists or oral and maxillofacial surgeons.

B. The Board of Medicine may accept a service member's military training, education, or experience as an intern or resident in an approved facility to satisfy the requirement of one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility, provided the applicant for licensure (i) has been honorably discharged from active military service in the armed forces of the United States, (ii) is a graduate of a Board-approved institution, (iii) has successfully completed all required examinations for licensure, and (iv) applies for licensure within six months of discharge from active military service.

C. The Board of Dentistry may accept the military training, education, or experience of a service member provided the applicant for licensure (i) has been honorably discharged from active military service in the armed forces of the United States, (ii) has been in continuous clinical practice for four of the six years immediately preceding the application for licensure, (iii) holds a diploma or certificate of a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, and (iv) has successfully completed all required examinations for licensure. Active patient care in the Dental Corps of the United States armed forces, voluntary practice in a public health clinic, or practice in an intern or residency program may be accepted by the Board to satisfy requirements for licensure.

D. Any regulatory board may require the service member to provide such documentation of his training, education, or experience as deemed necessary by the board to determine substantial equivalency.

E. As used in this section, "active military service" means federally funded military duty as (i) a member of the armed forces of the United States on active duty pursuant to Title 10 of the United States Code or (ii) a member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 of the United States Code.

2012, c. 524.

§ 54.1-119. Expediting the issuance of licenses, etc., to spouses of military service members; issuance of temporary licenses, etc

A. Notwithstanding any other law to the contrary and unless an applicant is found by the board to have engaged in any act that would constitute grounds for disciplinary action, a regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions or any other board named in this title shall expedite the issuance of a license, permit, certificate, or other document, however styled or denominated, required for the practice of any business, profession, or occupation in the Commonwealth to an applicant whose application has been deemed complete by the board and (i) who holds the same or similar license, permit, certificate, or other document required for the practice of any business, profession, or occupation issued by another jurisdiction; (ii) whose spouse is the subject of a military transfer to the Commonwealth; and (iii) who accompanies the applicant's spouse to Virginia, if, in the opinion of the

board, the requirements for the issuance of the license, permit, certificate, or other document in such other jurisdiction are substantially equivalent to those required in the Commonwealth.

B. If a board is unable to (i) complete the review of the documentation provided by the applicant or (ii) make a final determination regarding substantial equivalency within 20 days of the receipt of a completed application, the board shall issue a temporary license, permit, or certificate, provided the applicant otherwise meets the qualifications set out in subsection A. Any temporary license, permit, or certification issued pursuant to this subsection shall be limited for a period not to exceed 12 months and shall authorize the applicant to engage in the profession or occupation while the board completes its review of the documentation provided by the applicant or the applicant completes any specific requirements that may be required in Virginia that were not required in the jurisdiction in which the applicant holds the license, permit, or certificate.

C. The provisions of this section shall apply regardless of whether a regulatory board has entered into a reciprocal agreement with the other jurisdiction pursuant to subsection B of § 54.1-103.

D. Any regulatory board may require the applicant to provide documentation it deems necessary to make a determination of substantial equivalency.

2012, c. 604; 2014, c. 602; 2016, c. 33.

Subtitle II - PROFESSIONS AND OCCUPATIONS REGULATED BY THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION AND BOARDS WITHIN THE DEPARTMENT

Chapter 2 - GENERAL PROVISIONS

§ 54.1-200. Composition of regulatory boards

A regulatory board established to administer a system of certification or licensure as provided in §§ 54.1-310 and 54.1-311, unless otherwise specified by law, shall consist of at least five members. The Board for Professional and Occupational Regulation may recommend to the General Assembly the number of members to be placed on the regulatory board. Two members of each board established hereafter shall be citizen members and the remainder of the members shall be practitioners of the profession or occupation which is being regulated. Citizen members shall participate in all matters except decisions regarding the examination of applicants for licensure or decisions regarding the professional competence of licensees. Terms of the members shall be staggered to ensure a continuing body.

1979, c. 408, § 54-1.27; 1988, c. 765; 1993, c. 499 .

§ 54.1-201. Powers and duties of regulatory boards

A. The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure within its particular regulatory system, including when necessary the preparation, administration and grading of examinations.

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

4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

6. To ensure that inspections are conducted relating to the practice of each practitioner certified or licensed by the regulatory board to ensure that the practitioner is conducting his practice in a competent manner and within the lawful regulations promulgated by the board.

7. To place a regulant on probation or revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board. Conditions of probation may include, but not be limited to the successful completion of remedial education or examination.

8. To receive complaints concerning the conduct of any regulant and to take appropriate disciplinary action if warranted.

9. To provide a regulant subject to a disciplinary action with a notice advising the regulant of his right to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act. The notice shall state that if the regulant does not request an informal fact-finding conference within 30 days of receipt of the notice, the board may issue a case decision as defined in § 2.2-4001, with judicial review of the case decision in accordance with § 2.2-4026. If the regulant asserts his right to be heard prior to the board issuing its case decision, the board shall remand the case to an informal fact-finding conference. The notice required by this subdivision shall be sent by certified mail, return receipt requested or, if agreed to by the parties, electronic means, provided that the board retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

10. To promulgate canons of ethics under which the professional activities of regulants shall be conducted.

B. A regulant shall furnish, upon the request of a person to whom the regulant is providing or offering to provide service, satisfactory proof that the regulant (i) is duly licensed, certified, or registered under this subtitle and (ii) has obtained any required bond or insurance to engage in his profession or occupation.

C. As used in this section, "regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by this subtitle to be licensed, certified, or registered.

1979, c. 408, § 54-1.28; 1983, c. 569; 1988, c. 765; 1993, c. 499; 2005, c. 383; 2012, c. 769; 2013, cc. 398, 486.

§ 54.1-201.1. Issuance of temporary licenses and certifications

A. Notwithstanding any other provision of law, the regulatory boards within the Department of Professional and Occupational Regulation may issue a temporary license or certification to any applicant who holds a comparable license or certification issued by another state, provided (i) the license or certificate is valid, (ii) the applicant is in good standing with the regulatory entity that issued the license or certification, and (iii) the applicant simultaneously submits a completed application for a Virginia license or certification.

B. Any person who receives a temporary license or certification pursuant to this section shall be subject to the jurisdiction of the issuing regulatory board.

C. Any license or certification issued pursuant to this section shall be valid for a period not to exceed 45 days from the date of issuance and may not be renewed.

2010, cc. 260, 280.

§ 54.1-202. Monetary penalty; delegation to Director of authority enter consent agreements

A. Any person licensed or certified by a regulatory board who violates any statute or regulation pertaining to that regulatory board who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If a regulatory board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which shall not exceed $2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth.

B. Any regulatory board within the Department of Professional and Occupational Regulation may adopt a resolution delegating to the Director the authority to enter into consent agreements on behalf of the regulatory board with regulants of the board. Such resolution shall specify the types of violations to which the delegation applies and the maximum monetary penalty that may be imposed in a consent agreement for each regulatory violation. No delegation of authority pursuant to this subsection shall provide for a monetary penalty over $2,500 per regulatory violation.

1979, c. 408, § 54-1.22; 1988, c. 765; 1999, cc. 37, 950; 2001, c. 832; 2005, c. 383.

§ 54.1-203. Recovery of cost after grant of formal fact-finding

After a formal fact-finding pursuant to § 2.2-4020 wherein a sanction is imposed to fine, or to suspend, revoke or deny renewal of any license, certificate or registration, the regulatory board or the Department may assess the holder thereof the cost of conducting such fact-finding when the board or Department has final authority to grant such license, certificate or registration, unless the board or Department determines that the offense was inadvertent or done in a good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings.

1983, c. 401, § 54-1.22:1; 1988, c. 765.

§ 54.1-204. Prior convictions not to abridge rights

A. A person shall not be refused a license, certificate or registration to practice, pursue, or engage in any regulated occupation or profession solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license, certificate or registration is sought. However, the regulatory board shall have the authority to refuse a license, certificate or registration if, based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in such occupation or profession.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

5. The extent and nature of the person's past criminal activity;

6. The age of the person at the time of the commission of the crime;

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

8. The conduct and work activity of the person prior to and following the criminal activity; and

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

C. A regulatory board or department may require any applicant for registration, licensure or certification to submit to fingerprinting and to provide personal descriptive information to be

forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. Such applicant shall pay the cost of the fingerprinting or a criminal records check or both.

The regulatory board or department may enter into a contract to obtain the fingerprints and descriptive information as required for submission to the Central Criminal Records Exchange in a manner and format approved by the Central Criminal Records Exchange.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the regulatory board or department or their designee, who must belong to a governmental entity. If an applicant is denied a registration, license or certificate because of the information appearing in his criminal history record, the regulatory board or department shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The information shall not be disseminated except as provided for in this section.

D. A regulatory board or department shall consider the criminal information as contained in the applicant's state or national criminal history in lieu of the applicant providing certified copies of such court records in determining whether a criminal conviction directly relates to an occupation or profession or if an applicant is unfit or unsuited to engage in an occupation or profession. The regulatory board or department may request additional information from the applicant in making such determination.

1979, c. 408, § 54-1.21; 1988, c. 765; 2003, c. 582; 2009, c. 667.

Chapter 3 - DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

§ 54.1-300. Definitions

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

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Hearing Aid Specialists and Opticians, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, Virginia Board for Asbestos, Lead, and Home Inspectors, and Common Interest Community Board.

1979, c. 408, § 54-1.18; 1980, c. 757; 1981, c. 132; 1982, c. 538; 1983, cc. 115, 322; 1984, cc. 82, 203; 1985, c. 448; 1987, c. 686; 1988, cc. 354, 716, 765; 1990, cc. 459, 466; 1991, c. 551; 1993, c. 499; 1998, c. 27; 1999, c. 950; 2000, c. 726; 2001, cc. 723, 832; 2002, c. 784; 2003, c. 575; 2007, cc. 892, 924; 2009, cc. 358, 557; 2012, cc. 803, 835.

§ 54.1-301. Department continued; appointment of Director

The Department of Professional and Occupational Regulation within the executive branch is hereby continued. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with that of the Governor.

1979, c. 408, § 54-1.30; 1984, c. 720; 1988, c. 765; 1993, c. 499 .

§ 54.1-302. Supervision of Department

The Director of the Department of Professional and Occupational Regulation shall be responsible for the supervision of the Department under the direction and control of the Governor and shall exercise such other powers and perform such other duties as the Governor requires.

1979, c. 408, § 54-1.31; 1984, c. 720; 1988, c. 765; 1993, c. 499 .

§ 54.1-303. General powers of Director

The Director shall have the following general powers:

To employ personnel and assistance necessary for the operation of the Department and the purposes of this chapter.

To make and enter into all contracts and agreements necessary or incidental to the performance of the duties of the Department and the execution of its powers under this chapter, including, but

not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth.

To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

To do all acts necessary or convenient to carry out the purposes of this subtitle.

1979, c. 408, § 54-1.32; 1988, c. 765.

§ 54.1-304. Powers and duties of the Director with respect to regulatory boards

Each of the regulatory boards within the Department shall be a separate board. All of the administrative functions of the regulatory boards shall be under the direction and supervision of the Director.

In the performance and discharge of his duties with respect to the regulatory boards, the Director shall:

1. Be the secretary of each board;

2. Maintain all records for each board;

3. Collect and account for all fees prescribed 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 Board, regulatory boards and Department shall be paid;

4. Enforce all statutes and regulations the Director is required to administer;

5. Exercise other powers necessary to function as the sole administrative officer of each of such boards; and

6. Perform any additional administrative functions prescribed by the Board.

1979, c. 408, § 54-1.33; 1984, c. 734; 1988, c. 765.

§ 54.1-305. Bond of Director

Before entering upon the discharge of his duties, the Director shall give bond payable to the Commonwealth of Virginia conditioned upon the faithful discharge of his duties in a form approved by the Attorney General, in such penalty as shall be fixed by the Governor, with a surety or guaranty company authorized to do business in this Commonwealth. The premium required for the bond shall be paid out of the administrative fund appropriated to the Department, and the bond shall be filed with and preserved by the Comptroller.

1979, c. 408, § 54-1.34; 1988, c. 765.

§ 54.1-306. Enforcement of laws by Director or investigators; authority of investigators appointed by Director

A. The Director or investigators appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of this title, and any of the programs which may be in another title of this Code for which any regulatory board within Subtitle II has enforcement responsibility. The Director or investigators appointed by him shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce. The Director or investigators appointed by him shall also have the authority to issue summonses for violations of the statutes and regulations governing the unlicensed practice of professions regulated by the Department. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. In addition, sworn criminal investigators of the Department's Criminal Investigations section shall be statewide conservators of the peace while engaged in the performance of their official duties.

B. All investigators appointed by the Director are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this subtitle, or any regulation promulgated pursuant to authority given by this subtitle or in connection with any investigation conducted on behalf of any regulatory board within this subtitle or a program which may be located in another title in this Code. Such investigators are vested with the authority to obtain, serve and execute any warrant, paper or process issued by any court or magistrate or any regulatory board under the authority of the Director and request and receive criminal history information under the provisions of § 19.2-389.

C. Any regulatory board within the Department of Professional and Occupational Regulation may adopt a resolution delegating to the sworn investigators appointed by the Director pursuant to § 54.1-306, the authority to conduct inspections. After conducting an inspection pursuant to the delegation of inspection authority, an investigator may initiate an investigation based on any act, omission, or condition witnessed by the investigator and offer a consent agreement to the regulant to resolve any violation discovered during the inspection, subject to the provisions of subsection B of § 54.1-202. If a consent agreement is offered pursuant to the delegation of authority authorized by this subsection, it shall not become effective until approved by the Director.

1979, c. 408, § 54-1.39; 1988, c. 765; 1989, c. 16; 1991, c. 130; 2002, c. 605; 2005, c. 383.

§ 54.1-307. Subpoenas

In addition to the authority granted in § 2.2-4022 to issue subpoenas and the right to issue subpoenas granted the several regulatory boards within the Department of Professional and Occupational Regulation, the Director or a designated subordinate shall have the right to make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business, for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the Department or a regulatory board

to request production of any relevant records, documents and physical or other evidence of any person, partnership, association or corporation licensed or regulated by the Department. The court shall be authorized to issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence.

1979, c. 408, § 54-1.40; 1988, c. 765; 1993, c. 499 .

§ 54.1-307.1. Time for filing complaints against regulants

A. Except as otherwise provided in § 36-96.9 and subsections B and C of this section, any complaint against a regulant for any violation of statutes or regulations pertaining to the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of this title or any of the programs which may be in another title of the Code for which any regulatory board within Subtitle II has enforcement responsibility, in order to be investigated by the Department, shall be made in writing, or otherwise made in accordance with Department procedures, and received by the Department within three years of the act, omission or occurrence giving rise to the violation. Public information obtained from any source by the Director or agency staff may serve as the basis for a written complaint against a regulant.

B. However, where a regulant has materially and willfully misrepresented, concealed or omitted any information and the information so misrepresented, concealed or omitted is material to the establishment of the violation, the complaint may be made at any time within two years after discovery of the misrepresentation, concealment or omission.

C. In cases where criminal charges have been filed involving matters that, if found to be true, would also constitute a violation of the regulations or laws of the regulant's profession enforced by the Department, an investigation may be initiated by the Department at any time within two years following the date such criminal charges are filed.

D. Nothing in this section shall be construed to require the filing of a complaint if the alleged violation of the statute or regulation is discovered during the conduct of an inspection authorized by law, and the acts, omissions, or conditions constituting the alleged violations are witnessed by a sworn investigator appointed by the Director.

1994, c. 581; 2004, c. 297; 2005, c. 383.

§ 54.1-308. Departmental expenses

The compensation of the Director and the employees within the Department, including the compensation of the members of each board, shall be paid out of the total funds collected and charged to the accounts of the respective boards. The Director shall maintain a separate account for each board showing the moneys collected on its behalf and the expenses allocated to each board.

1979, c. 408, § 54-1.42; 1988, c. 765.

§ 54.1-308.1. Interest on cash bonds held by regulatory boards of Department

Interest earned on any cash bond held by the Department on behalf of any regulatory board shall be credited to the Department.

1995, c. 43.

§ 54.1-309. Board for Professional and Occupational Regulation; members, terms, chairman; meetings

There shall be a Board for Professional and Occupational Regulation within the Department of Professional and Occupational Regulation. The Board shall consist of nine members appointed by the Governor, subject to confirmation by the General Assembly. Members shall serve for four-year terms and no member shall serve for more than two full successive terms. The chairman of the Board shall be elected annually by the Board.

The Board shall meet at least once each year and on the call of the chairman when he deems additional meetings necessary.

1979, c. 408, §§ 54-1.23, 54-1.24; 1988, c. 765; 1993, c. 499; 2012, c. 522.

§ 54.1-310. Powers and duties of Board

A. The Board shall have the following powers and duties:

1. Provide a means of citizen access to the Department.

2. 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.

3. Monitor the policies and activities of the Department and have the right of access to departmental information.

4. Advise the Governor and the Director on matters relating to the regulation of professions and occupations.

5. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to carry out its responsibilities.

6. Evaluate constantly each profession and occupation in the Commonwealth not otherwise regulated for consideration as to whether such profession or occupation should be regulated and, if so, the degree of regulation that should be imposed. Whenever it determines that the public interest requires that a profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly next convened a regulatory system accompanied by comprehensive regulations necessary to conduct the degree of regulation required.

B. Upon the regulation of a profession or occupation as set forth in subsection A, the Board shall have the power and duty to promulgate supplemental regulations necessary to effectuate the purposes and intent of this chapter and to establish regulatory boards to administer the system of regulation and the regulations recommended by the Board and approved by the General Assembly.

1979, c. 408, § 54-1.25; 1984, cc. 720, 734; 1988, c. 765.

§ 54.1-310.1. Petitions for regulation; review by Board; report

A. Any professional or occupational group or organization, any person, or any other interested party that proposes the regulation of any unregulated professional or occupational group shall submit a request to the Board no later than December 1 of any year for analysis and evaluation during the following year.

B. The Board shall review the request only when filed with a statement of support for the proposed regulation signed by at least 10 members of the professional or occupational group for which regulation is being sought or at least 10 individuals who are not members of the professional or occupational group.

C. The request shall include, at a minimum, the following information:

1. A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in the Commonwealth, and an estimate of the number of practitioners in each group;

2. A definition of the problems to be solved by regulation and the reasons why regulation is necessary;

3. The reasons why registration, certification, licensure, or other type of regulation is being proposed and why that regulatory alternative was chosen;

4. The benefit to the public that would result from the proposed regulation;

5. The cost of the proposed regulation; and

6. A description of any anticipated disqualifications on an applicant for certification, licensure, or renewal and how such disqualifications serve public safety or commercial or consumer protection interests.

D. Upon receipt of a request submitted in accordance with the requirements of subsection C, the Board shall conduct an analysis and evaluation of any proposed regulation based on the criteria enumerated in § 54.1-311.

E. The Board may decline to conduct a review only if it:

1. Previously conducted an analysis and evaluation of the proposed regulation of the same professional or occupational group;

2. Issued a report not more than three years prior to the submission of the current proposal to regulate the same professional or occupational group; and

3. Finds that no new information has been submitted in the request that would cause the Board to alter or modify the recommendations made in its earlier report on the proposed regulation of the professional or occupational group.

F. The Board shall submit a report with its findings on whether the public interest requires the requested professional or occupational group be regulated to the House Committee on General Laws, the Senate Committee on General Laws and Technology, and the Joint Commission on Administrative Rules no later than November 1 of the year following the request submission.

2016, c. 467.

§ 54.1-311. Degrees of regulation

A. Whenever the Board determines that a particular profession or occupation should be regulated, or that a different degree of regulation should be imposed on a regulated profession or occupation, it shall consider the following degrees of regulation in the order provided in subdivisions 1 through 5. The Board shall regulate only to the degree necessary to fulfill the need for regulation and only upon approval by the General Assembly.

1. Private civil actions and criminal prosecutions. -- Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide more strict causes for civil action and criminal prosecution.

2. Inspection and injunction. -- Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may promulgate regulations consistent with the intent of this chapter to provide more adequate inspection procedures and to specify procedures whereby the appropriate regulatory board may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant to the appropriate state agency the power to provide sufficient inspection and injunction procedures.

3. Registration. -- Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may implement a system of registration.

4. Certification. -- When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may implement a system of certification.

5. Licensing. -- Whenever adequate regulation cannot be achieved by means other than licensing, the Board may establish licensing procedures for any particular profession or occupation.

B. In determining the proper degree of regulation, if any, the Board shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

3. The number of states which have regulatory provisions similar to those proposed.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

1979, c. 408, § 54-1.26; 1988, c. 765.

Chapter 4 - ARCHITECTS, ENGINEERS, SURVEYORS, LANDSCAPE ARCHITECTS AND INTERIOR DESIGNERS

Article 1 - ARCHITECTS, ENGINEERS, SURVEYORS AND LANDSCAPE ARCHITECTS

§ 54.1-400. Definitions

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

"Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture and whose competence has been attested by the Board through licensure as an architect.

The "practice of architecture" means any service wherein the principles and methods of architecture are applied, such as consultation, investigation, evaluation, planning and design, and includes the responsible administration of construction contracts, in connection with any private or public buildings, structures or projects, or the related equipment or accessories.

"Board" means the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects.

"Certified interior designer" means a design professional who meets the criteria of education, experience, and testing in the rendering of interior design services established by the Board through certification as an interior designer.

"Improvements to real property" means any valuable addition or amelioration made to land and generally whatever is erected on or affixed to land which is intended to enhance its value, beauty or utility, or adapt it to new or further purposes. Examples of improvements to real property include, but are not limited to, structures, buildings, machinery, equipment, electrical systems, mechanical systems, roads, and water and wastewater treatment and distribution systems.

"Interior design" by a certified interior designer means any service rendered wherein the principles and methodology of interior design are applied in connection with the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment. Such services relative to interior spaces shall include the preparation of documents for nonload-bearing interior construction, furnishings, fixtures, and equipment in order to enhance and protect the health, safety, and welfare of the public.

"Land surveyor" means a person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, and whose competence has been attested by the Board through licensure as a land surveyor.

The "practice of land surveying" includes surveying of areas for a determination or correction, a description, the establishment or reestablishment of internal and external land boundaries, or the determination of topography, contours or location of physical improvements, and also includes the planning of land and subdivisions thereof. The term "planning of land and subdivisions thereof" shall include, but not be limited to, the preparation of incidental plans and profiles for roads, streets and sidewalks, grading, drainage on the surface, culverts and erosion control measures, with reference to existing state or local standards.

"Landscape architect" means a person who, by reason of his special knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and whose competence has been attested by the Board through licensure as a landscape architect.

The "practice of landscape architecture" by a licensed landscape architect means any service wherein the principles and methodology of landscape architecture are applied in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to projects principally directed at the functional and aesthetic use of land.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles

and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer.

The "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The term "practice of engineering" shall not include the service or maintenance of existing electrical or mechanical systems.

"Residential wastewater" means sewage (i) generated by residential or accessory uses, not containing storm water or industrial influent, and having no other toxic, or hazardous constituents not routinely found in residential wastewater flows, or (ii) as certified by a professional engineer.

"Responsible charge" means the direct control and supervision of the practice of architecture, professional engineering, landscape architecture, or land surveying.

1970, c. 671, § 54-17.1; 1974, c. 534; 1980, c. 757; 1982, c. 590; 1984, c. 437; 1988, c. 765; 1990, c. 512; 1992, cc. 780, 783; 1998, c. 27; 2008, c. 68; 2009, c. 309.

§ 54.1-401. Exemptions

The following shall be exempted from the provisions of this chapter:

1. Practice of professional engineering and land surveying by a licensed architect when such practice is incidental to what may be properly considered an architectural undertaking.

2. Practice of architecture and land surveying by a licensed professional engineer when such practice is incidental to an engineering project.

3. Practice as a professional engineer, architect or landscape architect in this Commonwealth by any person not a resident of and having no established place of business in this Commonwealth, or by any person resident in this Commonwealth whose arrival is recent, provided that such person is otherwise qualified for such professional service in another state or country and qualifies in Virginia and files prior to commencement of such practice an application, with the required fee, for licensure as a professional engineer, architect or landscape architect. The exemption shall continue until the Board has had sufficient time to consider the application and grant or deny licensure or certification.

4. Engaging in the practice of professional engineering as an employee under a licensed professional engineer, engaging in the practice of architecture as an employee under a licensed architect, engaging in the practice of landscape architecture as an employee under a licensed landscape architect, or engaging in the practice of land surveying as an employee under a licensed land surveyor; provided, that such practice shall not include responsible charge of design or supervision.

5. Practice of professional engineering, architecture, landscape architecture, or land surveying solely as an employee of the United States. However, the employee shall not be exempt from other provisions of this chapter if he furnishes advisory service for compensation to the public in connection with engineering, architectural, landscape architecture, or land surveying matters.

6. Practice of architecture or professional engineering by an individual, firm or corporation on property owned or leased by such individual, firm or corporation, unless the public health or safety is involved.

7. Practice of engineering solely as an employee of a corporation engaged in interstate commerce, or as an employee of a public service corporation, by rendering such corporation engineering service in connection with its facilities which are subject to regulation by the State Corporation Commission; provided, that corporation employees who furnish advisory service to the public in connection with engineering matters other than in connection with such employment shall not be exempt from the provisions of this chapter.

Code 1950, § 54-37; 1968, c. 77; 1980, c. 757; 1988, c. 765; 1992, cc. 595, 780, 783; 2009, c. 309.

§ 54.1-402. Further exemptions from license requirements for architects, professional engineers, and land surveyors

A. No license as an architect or professional engineer shall be required pursuant to § 54.1-406 for persons who prepare plans, specifications, documents and designs for the following, provided any such plans, specifications, documents or designs bear the name and address of the author and his occupation:

1. Single- and two-family homes, townhouses and multifamily dwellings, excluding electrical and mechanical systems, not exceeding three stories; or

2. All farm structures used primarily in the production, handling or storage of agricultural products or implements, including, but not limited to, structures used for the handling, processing, housing or storage of crops, feeds, supplies, equipment, animals or poultry; or

3. Buildings and structures classified with respect to use as business (Use Group B) and mercantile (Use Group M), as provided in the Uniform Statewide Building Code and churches with an occupant load of 100 or less, excluding electrical and mechanical systems, where such building or structure does not exceed 5,000 square feet in total net floor area, or three stories; or

4. Buildings and structures classified with respect to use as factory and industrial (Use Group F) and storage (Use Group S) as provided in the Uniform Statewide Building Code, excluding electrical and mechanical systems, where such building or structure does not exceed 15,000 square feet in total net floor area, or three stories; or

5. Additions, remodeling or interior design without a change in occupancy or occupancy load and without modification to the structural system or a change in access or exit patterns or increase in fire hazard; or

6. Electric installations which comply with all applicable codes and which do not exceed 600 volts and 800 amps, where work is designed and performed under the direct supervision of a person licensed as a master's level electrician or Class A electrical contractor by written examination, and where such installation is not contained in any structure exceeding three stories or located in any of the following categories:

a. Use Group A-1 theaters which exceed assembly of 100 persons;

b. Use Group A-4 except churches;

c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or

7. Plumbing and mechanical systems using packaged mechanical equipment, such as equipment of catalogued standard design which has been coordinated and tested by the manufacturer, which comply with all applicable codes. These mechanical systems shall not exceed gauge pressures of 125 pounds per square inch, other than refrigeration, or temperatures other than flue gas of 300§ F (150 degrees C) where such work is designed and performed under the direct supervision of a person licensed as a master's level plumber, master's level heating, air conditioning and ventilating worker, or Class A contractor in those specialties by written examination. In addition, such installation may not be contained in any structure exceeding three stories or located in any structure which is defined as to its use in any of the following categories:

a. Use Group A-1 theaters which exceed assembly of 100 persons;

b. Use Group A-4 except churches;

c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or

8. The preparation of shop drawings, field drawings and specifications for components by a contractor who will supervise the installation and where the shop drawings and specifications (i) will be reviewed by the licensed professional engineer or architect responsible for the project or (ii) are otherwise exempted; or

9. Buildings, structures, or electrical and mechanical installations which are not otherwise exempted but which are of standard design, provided they bear the certification of a professional engineer or architect registered or licensed in another state, and provided that the design is adapted for the specific location and for conformity with local codes, ordinances and regulations, and is so certified by a professional engineer or architect licensed in Virginia; or

10. Construction by a state agency or political subdivision not exceeding $75,000 in value keyed to the January 1, 1991, Consumer Price Index (CPI) and not otherwise requiring a licensed architect, engineer, or land surveyor by an adopted code and maintenance by that state agency or political subdivision of water distribution, sewage collection, storm drainage systems, sidewalks,

streets, curbs, gutters, culverts, and other facilities normally and customarily constructed and maintained by the public works department of the state agency or political subdivision; or

11. Conventional and alternative onsite sewage systems receiving residential wastewater, under the authority of Chapter 6 of Title 32.1, designed by a licensed onsite soil evaluator, which utilize packaged equipment, such as equipment of catalogued standard design that has been coordinated and tested by the manufacturer, and complies with all applicable codes, provided (i) the flow is less than 1,000 gallons per day; and (ii) if a pump is included, (a) it shall not include multiple downhill runs and must terminate at a positive elevational change; (b) the discharge end is open and not pressurized; (c) the static head does not exceed 50 feet; and (d) the force main length does not exceed 500 feet.

B. No person shall be exempt from licensure as an architect or engineer who engages in the preparation of plans, specifications, documents or designs for:

1. Any unique design of structural elements for floors, walls, roofs or foundations; or

2. Any building or structure classified with respect to its use as high hazard (Use Group H).

C. Persons utilizing photogrammetric methods or similar remote sensing technology shall not be required to be licensed as a land surveyor pursuant to subsection B of § 54.1-404 or 54.1-406 to: (i) determine topography or contours, or to depict physical improvements, provided such maps or other documents shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination, or (ii) graphically show existing property lines and boundaries on maps or other documents provided such depicted property lines and boundaries shall only be used for general information.

Any determination of topography or contours, or depiction of physical improvements, utilizing photogrammetric methods or similar remote sensing technology by persons not licensed as a land surveyor pursuant to § 54.1-406 shall not show any property monumentation or property metes and bounds, nor provide any measurement showing the relationship of any physical improvements to any property line or boundary.

Any person not licensed pursuant to subsection B of § 54.1-404 or 54.1-406 preparing documentation pursuant to subsection C of § 54.1-402 shall note the following on such documentation: "Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination."

D. Terms used in this section, and not otherwise defined in this chapter, shall have the meanings provided in the Uniform Statewide Building Code in effect on July 1, 1982, including any subsequent amendments.

1982, c. 590, § 54-37.1; 1988, cc. 294, 765; 1992, cc. 780, 783; 2005, cc. 359, 440; 2008, c. 68.

§ 54.1-402.1. State and local government employees; license exemptions for persons employed prior to March 8, 1992

Any person engaged in the practice of engineering, architecture, or land surveying as those terms are defined in § 54.1-400 as a regular, full-time, salaried employee of the Commonwealth or any political subdivision of the Commonwealth on March 8, 1992, who remains employed by any state agency or political subdivision shall be exempt until June 30, 2010, from the licensure requirements of § 54.1-406 provided the employee does not furnish advisory service for compensation to the public or as an independent contracting party in this Commonwealth or any political subdivision thereof in connection with engineering, architectural, or land surveying matters. The chief administrative officer of any agency of the Commonwealth or political subdivision thereof employing persons engaged in the practice of engineering, architecture, or land surveying as regular, full-time, salaried employees shall have the authority and responsibility to determine the engineering, architecture, and land surveying positions which have responsible charge of engineering, architectural, or land surveying decisions.

1992, cc. 780, 783; 1994, c. 379.

§ 54.1-402.2. Cease and desist orders for unlicensed activity; civil penalty

A. Notwithstanding § 54.1-111, the Board may issue an order requiring any person to cease and desist from (i) practicing or offering to practice as an architect, professional engineer, land surveyor, or landscape architect when such person is not licensed or registered by the Board in accordance with this chapter or (ii) holding himself out as a certified interior designer when such person is not certified or registered by the Board in accordance with this chapter. The order shall be effective upon its entry and shall become final unless such person files an appeal with the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) within 21 days of the date of entry of the order.

B. If the person fails to cease and desist the unlicensed, uncertified, or unregistered activity after entry of an order in accordance with subsection A, the Board may refer the matter for enforcement pursuant to § 54.1-306.

C. Any person engaging in unlicensed, uncertified, or unregistered activity shall be subject to further proceedings before the Board and the Board may impose a civil penalty not to exceed $2,500. Any penalties collected under this section shall be paid to the Literary Fund after deduction of the administrative costs of the Board in furtherance of this section.

D. Nothing contained in this section shall apply to any person engaged in activity exempted from the provisions of this chapter.

2007, c. 618; 2009, c. 309.

§ 54.1-403. Board members and officers; quorum

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects shall be composed of thirteen members as follows: three architects, three

professional engineers, three land surveyors, two landscape architects and two certified interior designers. Each interior designer appointment to the Board may be made from nominations submitted by the Council of Certified Virginia Interior Designers, who shall nominate three persons for each interior designer vacancy. In no case shall the Governor be bound to make any appointment from the nominees.

Board members shall have actively practiced or taught their professions for at least ten years prior to their appointments. The terms of Board members shall be four years.

The Board shall elect a president and vice-president from its membership.

Eight Board members, consisting of two engineers, two architects, two land surveyors, one landscape architect and one interior designer, shall constitute a quorum.

Code 1950, §§ 54-19, 54-22, 54-23; 1980, c. 757, § 54-18.1; 1981, c. 447; 1988, cc. 42, 765; 1990, c. 512; 1991, c. 291; 1998, c. 27; 2009, c. 309; 2010, c. 91.

§ 54.1-404. Regulations; code of professional practice and conduct

A. The Board shall promulgate regulations not inconsistent with this chapter governing its own organization, the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties.

B. The Board may impose different licensure requirements for a limited area of the practice of land surveying for persons who determine topography, contours, or depiction of physical improvements utilizing photogrammetric methods or similar remote sensing technology who are not otherwise exempt pursuant to subsection C of § 54.1-402. Any such requirements shall include reasonable provisions for licensure without examination of persons deemed by the Board to be qualified to provide photogrammetric and remote sensing surveying services.

Any license issued pursuant to this subsection shall be distinctive, reflecting the limited area of the practice of land surveying so authorized, and considered as a land surveyor and the practice of land surveying for the purposes of §§ 13.1-549, 13.1-1111, 54.1-402, 54.1-405, 54.1-406 and 54.1-411. Nothing herein shall be construed to authorize a person issued a limited license pursuant to this subsection to practice beyond such limited area of practice. The establishment of any such limited license shall not prohibit any duly qualified land surveyor licensed pursuant to § 54.1-400 from engaging in any such limited area of practice.

C. The regulations may include a code of professional practice and conduct, the provisions of which shall serve any or all of the following purposes:

1. The protection of the public health, safety and welfare;

2. The maintenance of standards of objectivity, truthfulness and reliability in public statements by professionals;

3. The avoidance by professionals of conflicts of interests;

4. The prohibition of solicitation or acceptance of work by professionals on any basis other than their qualifications for the work offered;

5. The restriction by the professional in the conduct of his professional activity from association with any person engaging in illegal or dishonest activities; or

6. The limitation of professional service to the area of competence of each professional.

Code 1950, § 54-25; 1974, c. 459; 1982, c. 590; 1988, c. 765; 2005, cc. 359, 440.

§ 54.1-404.1. Repealed

Repealed by Acts 2010, c. 91, cl. 2.

§ 54.1-404.2. Continuing education

A. The Board shall promulgate regulations governing continuing education requirements for architects, professional engineers, land surveyors, and landscape architects licensed by the Board. Such regulations shall require the completion of the equivalent of 16 hours per biennium of Board-approved continuing education activities as a prerequisite to the renewal or reinstatement of a license issued to an architect, professional engineer, land surveyor, or landscape architect. The Board shall establish criteria for continuing education activities including, but not limited to (i) content and subject matter; (ii) curriculum; (iii) standards and procedures for the approval of activities, courses, sponsors, and instructors; (iv) methods of instruction for continuing education courses; and (v) the computation of course credit.

B. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship.

2006, c. 683; 2009, c. 309.

§ 54.1-405. Examinations and issuance of licenses and certificates

A. The Board shall hold at least one examination each year at times and locations designated by the Board. A license to practice as a professional engineer, an architect, a land surveyor, or a landscape architect shall be issued to every applicant who complies with the requirements of this chapter and the regulations of the Board. A license shall be valid during the life of the holder unless revoked or suspended by the Board. A license holder must register with the Board to practice in the Commonwealth. The licenses shall be signed by at least four members of the Board.

B. Notwithstanding the provisions of § 54.1-111, a license holder who has retired from practice may use the designation granted by such license, followed by the word "emeritus," without possessing a current registration from the Board provided (i) the license has not been revoked or suspended by the Board and (ii) the license holder does not practice or offer to practice architecture, engineering, land surveying, or landscape architecture.

Code 1950, § 54-26; 1974, c. 534; 1980, c. 757; 1988, c. 765; 1992, c. 613; 1994, c. 29; 2009, c. 309; 2010, c. 612.

§ 54.1-406. License required

A. Unless exempted by § 54.1-401, 54.1-402, or 54.1-402.1, a person shall hold a valid license prior to engaging in the practice of architecture or engineering which includes design, consultation, evaluation or analysis and involves proposed or existing improvements to real property.

Unless exempted by § 54.1-401, 54.1-402, or 54.1-402.1, a person shall hold a valid license prior to engaging in the practice of land surveying.

B. Unless exempted by § 54.1-402, any person, partnership, corporation or other entity offering to practice architecture, engineering, or land surveying without being registered or licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111 of this title.

C. Any person, partnership, corporation or other entity which is not licensed or registered to practice in accordance with this chapter and which advertises or promotes through the use of the words "architecture," "engineering" or "land surveying" or any modification or derivative thereof in its name or description of its business activity in a manner that indicates or implies that it practices or offers to practice architecture, engineering or land surveying as defined in this chapter shall be subject to the provisions of § 54.1-111.

D. Notwithstanding these provisions, any state agency or political subdivision of the Commonwealth unable to employ a qualified licensed engineer, architect, or land surveyor to fill a responsible charge position, after reasonable and unsuccessful search, may fill the position with an unlicensed person upon the determination by the chief administrative officer of the agency or political subdivision that the person, by virtue of education, experience, and expertise, can perform the work required of the position.

E. Notwithstanding the provisions of this section, a contractor who is licensed pursuant to the provisions of Chapter 11 (§ 54.1-1100 et seq.) of this title shall not be required to be licensed or registered to practice in accordance with this chapter when bidding upon or negotiating design-build contracts or performing services other than architectural, engineering or land surveying services under a design-build contract. The architectural, engineering or land surveying services offered or rendered in connection with such contracts shall only be rendered by an architect, professional engineer or land surveyor licensed in accordance with this chapter.

1979, c. 408, § 54-26.1; 1982, c. 590; 1984, c. 470; 1988, c. 765; 1992, cc. 780, 783; 1994, c. 784; 1996, c. 329; 2004, c. 191; 2005, cc. 359, 440; 2010, c. 91.

§ 54.1-407. Land surveying

Notwithstanding the provisions of any regulation promulgated by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, a land surveyor shall not be required by Board regulations to set corner monumentation or perform a boundary survey on any property when (i) corner monumentation has been set or is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.2-2240 or subdivision 7 of § 15.2-2241, or where the placing of such monumentation is

covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty, or (ii) the purpose of the survey is to determine the location of the physical improvements on the said property only, if the prospective mortgagor or legal agent ordering the survey agrees in writing that such corner monumentation shall not be provided in connection with any such physical improvements survey. The provisions of this section shall apply only to property located within the Counties of Arlington, Fairfax, King George, Loudoun, Prince William, Spotsylvania and Stafford; and the Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park.

1986, c. 531, § 54-25.1; 1988, cc. 271, 765; 1998, c. 27.

§ 54.1-408. Practice of land surveying; subdivisions

In addition to the work defined in § 54.1-400, a land surveyor may, for subdivisions, site plans and plans of development only, prepare plats, plans and profiles for roads, storm drainage systems, sanitary sewer extensions, and water line extensions, and may perform other engineering incidental to such work, but excluding the design of pressure hydraulic, structural, mechanical, and electrical systems. The work included in this section shall involve the use and application of standards prescribed by local or state authorities. The land surveyor shall pass an examination given by the Board in addition to that required for the licensing of land surveyors as defined in § 54.1-400. Any land surveyor previously licensed pursuant to subdivision (3) (b) of former § 54-17.1 may continue to do the work herein described without further examination.

Except as provided, nothing contained herein or in the definition of "practice of land surveying" in § 54.1-400 shall be construed to include engineering design and the preparation of plans and specifications for construction.

1970, c. 671, § 54-17.1; 1974, c. 534; 1980, c. 757; 1982, c. 590; 1984, c. 437; 1988, c. 765.

§ 54.1-409. Practice of landscape architecture; license required

A. Beginning July 1, 2010, a person who engages in the practice of landscape architecture as defined in § 54.1-400 and who holds himself out as a landscape architect shall hold a valid license prior to engaging in such practice. Resulting site plans, plans of development, preliminary plats, drawings, technical reports, and specifications, submitted under the seal, stamp or certification of a licensed landscape architect, shall be accepted for review by local and state authorities, in connection with both public and private projects. However, no landscape architect, unless he is also licensed as a land surveyor, shall provide boundary surveys, plats or descriptions for any purpose, except in conjunction with or under the supervision of an appropriately licensed professional, who shall provide certification, as required. Landscape architects shall only engage in projects which they are qualified to undertake based on education, training, and examination and in accordance with the practice of landscape architecture as defined in § 54.1-400.

Any person who (i) holds a valid certification as a landscape architect issued by the Board on June 30, 2010, and (ii) is a Virginia-certified landscape architect in good standing with the Board, shall be licensed to practice landscape architecture as of July 1, 2010.

B. Nothing contained herein or in the definition of "practice of landscape architecture" or in the definition of "landscape architect" in § 54.1-400 shall be construed to restrict or otherwise affect the right of any architect, professional engineer, land surveyor, nurseryman, landscape designer, landscape contractor, land planner, community planner, landscape gardener, golf course designer, turf maintenance specialist, irrigation designer, horticulturist, arborist, or any other similar person from engaging in their occupation or the practice of their profession or from rendering any service in connection therewith that is not otherwise proscribed.

C. Any person, partnership, corporation, or other entity that is not licensed to practice landscape architecture in accordance with the provisions of this chapter and that advertises or promotes through the use of the words "landscape architecture" or any modification or derivation thereof in its name or description of its business activity in a manner that indicates or implies that it practices or offers to practice landscape architecture as defined in this chapter shall be subject to the provisions of § 54.1-111. Nothing contained herein or in the definitions of "landscape architect" or "practice of landscape architecture" in § 54.1-400 shall be construed to restrict or otherwise affect the right of any person undertaking the occupations or professions referred in subsection B of this section to engage in their occupation, or the practice of their profession, or from rendering any service in connection therewith that is not otherwise proscribed.

D. Any person, partnership, corporation, or other entity offering to practice landscape architecture without being registered or licensed to practice landscape architecture in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111. Nothing contained herein or in the definitions of "landscape architect" and "practice of landscape architecture" in § 54.1-400 shall be construed to restrict or otherwise affect the right of any person undertaking the occupations or professions referenced in subsection B of this section to engage in their occupation, or the practice of their profession, or from rendering any service in connection therewith that is not otherwise proscribed.

1970, c. 671, § 54-17.1; 1974, c. 534; 1980, c. 757; 1982, c. 590; 1984, c. 437; 1988, c. 765; 2000, c. 990; 2006, c. 643; 2009, c. 309.

§ 54.1-410. Other building laws not affected; duties of public officials

A. Nothing contained in this chapter or in the regulations of the Board shall be construed to limit the authority of any public official authorized by law to approve plans, specifications or calculations in connection with improvements to real property. This shall include, but shall not be limited to, the authority of officials of local building departments as defined in § 36-97, to require pursuant to the Uniform Statewide Building Code, state statutes, local ordinances, or code requirements that such work be prepared by a person licensed or certified pursuant to this chapter.

B. Any public body authorized by law to require that plans, specifications or calculations be prepared in connection with improvements to real property shall establish a procedure to ensure that such plans, specifications or calculations be prepared by an architect, professional engineer, land surveyor or landscape architect licensed or authorized pursuant to this chapter in any case in which the exemptions contained in §§ 54.1-401, 54.1-402 or § 54.1-402.1 are not applicable.

Drafting of permits, reviewing of plans or inspection of facilities for compliance with an adopted code or standard by any public body or its designated agent shall not require the services of an architect, professional engineer, land surveyor or landscape architect licensed pursuant to this chapter.

1982, c. 590, § 54-37.2; 1988, c. 765; 1992, cc. 780, 783; 1993, c. 662; 2009, c. 309.

§ 54.1-410.1. Prerequisites for obtaining business license

Any architect or professional engineer applying for or renewing a business license in any locality in accordance with Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 shall furnish prior to the issuance or renewal of such license either (i) satisfactory proof that he is duly licensed under the terms of this chapter or (ii) a written statement, supported by an affidavit, that he is not subject to licensure as an architect or professional engineer pursuant to this chapter.

No locality shall issue or renew or allow the issuance or renewal of such license unless the architect or professional engineer has furnished his license number issued pursuant to this chapter or evidence of being exempt from the provisions of this chapter.

2011, c. 79.

§ 54.1-411. Organization for practice; registration

A. Nothing contained in this chapter or in the regulations of the Board shall prohibit the practice of architecture, engineering, land surveying, landscape architecture or the offering of the title of certified interior designer by any corporation, partnership, sole proprietorship, limited liability company, or other entity provided such practice or certification is rendered through its officers, principals or employees who are correspondingly licensed or certified. No individual practicing architecture, engineering, land surveying, landscape architecture, or offering the title of certified interior designer under the provisions of this section shall be relieved of responsibility that may exist for services performed by reason of his employment or other relationship with such entity. No such corporation, partnership, sole proprietorship, limited liability company, or other entity, or any affiliate thereof, shall, on its behalf or on behalf of any such licensee or certificate holder, nor any licensee or certificate holder, be prohibited from (i) purchasing or maintaining insurance against any such liability; (ii) entering into any indemnification agreement with respect to any such liability; (iii) receiving indemnification as a result of any such liability; or (iv) limiting liability through contract.

B. Except for professional corporations holding a certificate of authority issued in accordance with § 13.1-549, professional limited liability companies holding a certificate of authority issued in

accordance with § 13.1-1111, and sole proprietorships that do not employ other individuals for which licensing is required, any person, corporation, partnership, limited liability company, or other entity offering or rendering the practice of architecture, engineering, land surveying, landscape architecture or offering the title of certified interior designer shall register with the Board. As a condition of registration, the entity shall name at least one licensed architect, professional engineer, land surveyor, landscape architect or certified interior designer for such profession offered or rendered. The person or persons named shall be responsible and have control of the regulated services rendered by the entity.

C. The Board shall adopt regulations governing the registration of persons, corporations, partnerships, limited liability companies, sole proprietors and other entities as required in subsections A and B which:

1. Provide for procedural requirements to obtain and renew registration on a periodic basis;

2. Establish fees for the application and renewal of registration sufficient to cover costs;

3. Assure that regulated services are rendered and controlled by persons authorized to do so; and

4. Ensure that conflicts of interests are disclosed.

1982, c. 590, § 54-37.3; 1983, c. 28; 1988, c. 765; 1992, c. 574; 2000, c. 763; 2009, c. 309; 2010, cc. 99, 206.

Article 2 - INTERIOR DESIGNERS

§ 54.1-412. Applicability

This chapter shall not be construed to restrict or otherwise affect the right of any uncertified interior designer, architect, engineer, or any other person from rendering any of the services which constitute the practice of interior design; however, no person may hold himself out as, or use the title of, "certified interior designer" unless he has been so certified pursuant to the provisions of this chapter.

1990, c. 512 .

§ 54.1-413. Examination

At least once each year the Board shall arrange for the National Council for Interior Design Qualification examination or an equivalent examination approved by the Board to be given to qualified applicants for certification as interior designers.

1990, c. 512; 1991, c. 291 .

§ 54.1-414. Issuance of certification; waiver of examination

The Board shall issue a certification to practice as a certified interior designer in the Commonwealth to every applicant who shall have complied with the requirements of this chapter and the regulations of the Board. The certificates shall be signed by at least three members of the Board.

The Board shall certify any person who is a graduate of a minimum four-year professional degree program accredited by the Foundation for Interior Design Education Research, an equivalent accrediting organization or a professional program approved by the Board and who has two years of monitored experience in the performance of interior design services and who has taken and passed the examination for certification as a certified interior designer.

The Board, in its discretion, shall determine whether an applicant's professional education and professional experience in the field of interior design are sufficient to establish eligibility for the examination.

The Board, in lieu of all examinations, may accept satisfactory evidence of licensing or certification in another state or country or the District of Columbia where (i) the qualifications for such licensure or certification are equal, in the opinion of the Board, to the qualifications required by the provisions of this chapter as of the date of application and (ii) the applicant is the holder of a license or certificate in good standing. Upon receipt of such satisfactory evidence and provided all other such requirements of this chapter are complied with, a certificate shall be issued to such applicant.

1990, c. 512; 1991, c. 291; 1994, c. 625; 2000, c. 42.

§ 54.1-415. Repealed
Repealed by Acts 2000, c. 42, cl. 2.

Chapter 5 - ASBESTOS, LEAD, AND HOME INSPECTION CONTRACTORS AND WORKERS

Article 1 - GENERAL PROVISIONS

§ 54.1-500. (Effective until July 1, 2017) Definitions
As used in this chapter, unless the context requires a different meaning:

"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.

"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.

"Accredited renovation training program" means a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling.

"Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.

"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

"Asbestos contractor's license" means an authorization issued by the Board permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos-containing materials" or "ACM" means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.

"Asbestos inspector's license" means an authorization issued by the Board permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.

"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.

"Asbestos management planner's license" means an authorization issued by the Board permitting a person to develop or alter an asbestos management plan.

"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.

"Asbestos project designer's license" means an authorization issued by the Board permitting a person to design an asbestos abatement project.

"Asbestos project monitor's license" means an authorization issued by the Board permitting a person to monitor an asbestos project, subject to Department regulations.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Board permitting an individual to work on an asbestos project.

"Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

"Certified home inspection" means any inspection of a residential building for compensation conducted by a certified home inspector. A certified home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components. A certified home inspection may be limited in scope as provided in a home inspection contract, provided

such contract is not inconsistent with the provisions of this chapter or the regulations of the Board.

"Certified home inspector" means a person who meets the criteria of education, experience, and testing required by this chapter and regulations of the Board and who has been certified by the Board.

"Dust clearance sampling" means an on-site collection of dust or other debris that is present after the completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a report explaining the results.

"Dust sampling technician" means an individual licensed by the Board to perform dust clearance sampling.

"Friable" means that the material when dry may be crumbled, pulverized, or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards, including lead-contaminated dust or soil.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and lead-contaminated soil.

"Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15 U.S.C. § 2683).

"Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the Environmental Protection Agency.

"Lead contractor" means a person who has met the Board's requirements and has been issued a license by the Board to enter into contracts to perform lead abatements.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provisions of a report explaining the results of the investigation.

"Lead inspector" means an individual who has been licensed by the Board to conduct lead inspections and abatement clearance testing.

"Lead project design" means any descriptive form written as instructions or drafted as a plan describing the construction or setting up of a lead abatement project area and the work practices to be utilized during the lead abatement project.

"Lead project designer" means an individual who has been licensed by the Board to prepare lead project designs.

"Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Lead risk assessor" means an individual who has been licensed by the Board to conduct lead inspections, lead risk assessments and abatement clearance testing.

"Lead supervisor" means an individual who has been licensed by the Board to supervise lead abatements.

"Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board to perform lead abatement.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching an accredited asbestos training program, an accredited lead training program, an accredited renovation training program, or any combination thereof.

"Renovation" means the modification of any existing structure or portion thereof, for compensation, that results in the disturbance of painted surfaces, unless that activity is (i) performed as a part of a lead abatement or (ii) limited in scope to the site work or remediation as referenced in the definition of contractor in § 54.1-1100. As used in this definition, "compensation" shall include the receipt of (a) pay for work performed, such as that paid to contractors and subcontractors; (b) wages, including but not limited to those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (c) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

"Renovation contractor" means a person who has met the Board's requirements and has been issued a license by the Board to conduct renovations.

"Renovator" means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Training manager" means the individual responsible for administering a training program and monitoring the performance of instructors for an accredited asbestos training, accredited lead training program or accredited renovation training program.

1987, c. 579, § 54-145.4; 1988, cc. 765, 802; 1989, c. 397; 1990, cc. 49, 73, 823; 1992, c. 152; 1993, cc. 499, 660; 1994, cc. 185, 911; 1996, cc. 76, 176, 180, 846; 1997, c. 885; 1998, c. 739; 2001, c. 723; 2009, cc. 358, 819; 2012, cc. 803, 835; 2016, c. 527.

§ 54.1-500. (Effective July 1, 2017) Definitions

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

"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.

"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.

"Accredited renovation training program" means a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling.

"Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.

"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

"Asbestos contractor's license" means an authorization issued by the Board permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos-containing materials" or "ACM" means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.

"Asbestos inspector's license" means an authorization issued by the Board permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.

"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.

"Asbestos management planner's license" means an authorization issued by the Board permitting a person to develop or alter an asbestos management plan.

"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.

"Asbestos project designer's license" means an authorization issued by the Board permitting a person to design an asbestos abatement project.

"Asbestos project monitor's license" means an authorization issued by the Board permitting a person to monitor an asbestos project, subject to Department regulations.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Board permitting an individual to work on an asbestos project.

"Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

"Dust clearance sampling" means an on-site collection of dust or other debris that is present after the completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a report explaining the results.

"Dust sampling technician" means an individual licensed by the Board to perform dust clearance sampling.

"Friable" means that the material when dry may be crumbled, pulverized, or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Home inspection" means any inspection of a residential building for compensation conducted by a licensed home inspector. A home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components. A home inspection may be limited in scope as provided in a home inspection contract, provided that such contract is not inconsistent with the provisions of this chapter or the regulations of the Board. For purposes of this chapter, residential building energy analysis alone, as defined in § 54.1-1144, shall not be considered a home inspection.

"Home inspector" means a person who meets the criteria of education, experience, and testing required by this chapter and regulations of the Board and who has been licensed by the Board to perform home inspections.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards, including lead-contaminated dust or soil.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and lead-contaminated soil.

"Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15 U.S.C. § 2683).

"Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the Environmental Protection Agency.

"Lead contractor" means a person who has met the Board's requirements and has been issued a license by the Board to enter into contracts to perform lead abatements.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provisions of a report explaining the results of the investigation.

"Lead inspector" means an individual who has been licensed by the Board to conduct lead inspections and abatement clearance testing.

"Lead project design" means any descriptive form written as instructions or drafted as a plan describing the construction or setting up of a lead abatement project area and the work practices to be utilized during the lead abatement project.

"Lead project designer" means an individual who has been licensed by the Board to prepare lead project designs.

"Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Lead risk assessor" means an individual who has been licensed by the Board to conduct lead inspections, lead risk assessments and abatement clearance testing.

"Lead supervisor" means an individual who has been licensed by the Board to supervise lead abatements.

"Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board to perform lead abatement.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching an accredited asbestos training program, an accredited lead training program, an accredited renovation training program, or any combination thereof.

"Renovation" means the modification of any existing structure or portion thereof, for compensation, that results in the disturbance of painted surfaces, unless that activity is (i) performed as a part of a lead abatement or (ii) limited in scope to the site work or remediation as referenced in the definition of contractor in § 54.1-1100. As used in this definition, "compensation" shall

include the receipt of (a) pay for work performed, such as that paid to contractors and subcontractors; (b) wages, including but not limited to those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (c) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

"Renovation contractor" means a person who has met the Board's requirements and has been issued a license by the Board to conduct renovations.

"Renovator" means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Training manager" means the individual responsible for administering a training program and monitoring the performance of instructors for an accredited asbestos training, accredited lead training program or accredited renovation training program.

1987, c. 579, § 54-145.4; 1988, cc. 765, 802; 1989, c. 397; 1990, cc. 49, 73, 823; 1992, c. 152; 1993, cc. 499, 660; 1994, cc. 185, 911; 1996, cc. 76, 176, 180, 846; 1997, c. 885; 1998, c. 739; 2001, c. 723; 2009, cc. 358, 819; 2012, cc. 803, 835; 2016, cc. 161, 436, 527.

§ 54.1-500.1. (Effective until July 1, 2017) Virginia Board for Asbestos, Lead, and Home Inspectors; membership; meetings; offices; quorum

The Virginia Board for Asbestos, Lead, and Home Inspectors shall be appointed by the Governor and composed of 14 members as follows: one shall be a representative of a Virginia-licensed asbestos contractor, one shall be a representative of a Virginia-licensed lead contractor, one shall be a representative of a Virginia-licensed renovation contractor, one shall be either a Virginia-licensed asbestos inspector or project monitor, one shall be a Virginia-licensed lead risk assessor, one shall be a Virginia-licensed renovator, one shall be a Virginia-licensed dust sampling technician, one shall be a representative of a Virginia-licensed asbestos analytical laboratory, one shall be a representative of an asbestos, lead, or renovation training program, one shall be a member of the Board for Contractors, two shall be certified home inspectors, and two shall be citizen members. After initial staggered terms, the terms of members of the Board shall be four years, except that vacancies may be filled for the remainder of the unexpired term. The two home inspector members appointed to the Board shall have practiced as home inspectors for at least five consecutive years immediately prior to appointment. The renovation contractor, renovator, and dust sampling technician members appointed to the board shall have practiced respectively as a renovation contractor, renovator, or dust sampling technician for at least five consecutive years prior to appointment.

The Board shall meet at least once each year and other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one

year. Eight members of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 2001, c. 723; 2009, cc. 358, 819; 2012, cc. 522, 803, 835.

§ 54.1-500.1. (Effective July 1, 2017) Virginia Board for Asbestos, Lead, and Home Inspectors; membership; meetings; offices; quorum

The Virginia Board for Asbestos, Lead, and Home Inspectors shall be appointed by the Governor and composed of 14 members as follows: one shall be a representative of a Virginia-licensed asbestos contractor, one shall be a representative of a Virginia-licensed lead contractor, one shall be a representative of a Virginia-licensed renovation contractor, one shall be either a Virginia-licensed asbestos inspector or project monitor, one shall be a Virginia-licensed lead risk assessor, one shall be a Virginia-licensed renovator, one shall be a Virginia-licensed dust sampling technician, one shall be a representative of a Virginia-licensed asbestos analytical laboratory, one shall be a representative of an asbestos, lead, or renovation training program, one shall be a member of the Board for Contractors, two shall be Virginia-licensed home inspectors, and two shall be citizen members. After initial staggered terms, the terms of members of the Board shall be four years, except that vacancies may be filled for the remainder of the unexpired term. The two home inspector members appointed to the Board shall have practiced as home inspectors for at least five consecutive years immediately prior to appointment. The renovation contractor, renovator, and dust sampling technician members appointed to the board shall have practiced respectively as a renovation contractor, renovator, or dust sampling technician for at least five consecutive years prior to appointment.

The Board shall meet at least once each year and other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. Eight members of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 2001, c. 723; 2009, cc. 358, 819; 2012, cc. 522, 803, 835; 2016, cc. 161, 436.

§ 54.1-501. Powers and duties of the Board

The Board shall administer and enforce this chapter. The Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos, lead, and renovation licenses, and governing conflicts of interest among various categories of asbestos, lead, and renovation licenses;

2. Approve the criteria for accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, training managers, and principal instructors;

3. Approve accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, examinations and the grading system for testing applicants for asbestos, lead, and renovation licensure;

4. Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories;

5. Promulgate regulations governing the functions and duties of project monitors on asbestos projects, circumstances in which project monitors shall be required for asbestos projects, and training requirements for project monitors;

6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of accredited lead training programs, (ii) licensure of individuals and firms to engage in lead-based paint activities, and (iii) establishment of standards for performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations. If the United States Environmental Protection Agency (EPA) has adopted, prior to the promulgation of any related regulations by the Board, any final regulations relating to lead-based paint activities, then the related regulations of the Board shall not be more stringent than the EPA regulations in effect as of the date of such promulgation. In addition, if the EPA shall have outstanding any proposed regulations relating to lead-based paint activities (other than as amendments to existing EPA regulations), as of the date of promulgation of any related regulations by the Board, then the related regulations of the Board shall not be more stringent than the proposed EPA regulations. In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA regulations;

7. (Effective until July 1, 2017) Promulgate regulations for certification of home inspectors not inconsistent with this chapter regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the Board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties; and

7. (Effective July 1, 2017) Promulgate regulations for the licensing of home inspectors not inconsistent with this chapter regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations, the proper conduct of its examinations, the proper conduct of the home inspectors licensed by the Board, and the proper discharge of its duties; and

8. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the (i) approval of accredited renovation training programs, (ii) licensure of individuals and firms to engage in renovation, and (iii) establishment of standards

for performing renovation consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency (EPA) regulations. Such regulations of the Board shall be consistent with the EPA Lead Renovation, Repair, and Painting Program final rule.

1987, c. 579, § 54-145.5; 1988, c. 765; 1989, c. 397; 1990, cc. 49, 73, 823; 1991, c. 45; 1992, c. 477; 1993, cc. 499, 660; 1994, cc. 185, 911; 1995, cc. 543, 585; 1996, cc. 180, 846; 1997, cc. 649, 885; 1998, c. 739; 2001, c. 723; 2009, cc. 358, 819; 2012, cc. 803, 835; 2016, cc. 161, 436.

§ 54.1-501.1. Applicability

The provisions of this chapter shall not apply to any employer, or any employees of such employer, regulated by the federal Occupational Safety and Health Act, and under the enforcement authority of the Occupational Safety and Health Administration.

1992, c. 52 .

§ 54.1-502. Interdepartmental implementation plan

The Board, in conjunction with the Departments of General Services, Health, Labor and Industry, Education, and Environmental Quality, shall develop a plan for the implementation of this chapter which specifies the duties of each agency.

1987, c. 579, § 54-145.6; 1988, cc. 765, 802; 1989, c. 397; 1990, cc. 73, 823; 1993, c. 660 .

§ 54.1-503. Licenses required

A. It shall be unlawful for any person who does not have an asbestos contractor's license to contract with another person, for compensation, to carry out an asbestos project or to perform any work on an asbestos project. It shall be unlawful for any person who does not have an asbestos project designer's license to develop an asbestos project design. It shall be unlawful for any person who does not have an asbestos inspector's license to conduct an asbestos inspection. It shall be unlawful for any person who does not have an asbestos management planner's license to develop an asbestos management plan. It shall be unlawful for any person who does not have a license as an asbestos project monitor to act as project monitor on an asbestos project.

B. It shall be unlawful for any person who does not possess a valid asbestos analytical laboratory license issued by the Board to communicate the findings of an analysis, verbally or in writing, for a fee, performed on material known or suspected to contain asbestos for the purpose of determining the presence or absence of asbestos.

C. It shall be unlawful for any person who does not possess a license as a lead contractor to contract with another person to perform lead abatement activities or to perform any lead abatement activity or work on a lead abatement project. It shall be unlawful for any person who does not possess a lead supervisor's license to act as a lead supervisor on a lead abatement project. It shall be unlawful for any person who does not possess a lead worker's license to act as a lead worker on a lead abatement project. It shall be unlawful for any person who does not possess a lead project designer's license to develop a lead project design. It shall be unlawful for any person who does not possess a lead inspector's license to conduct a lead inspection. It shall be unlawful for any

person who does not possess a lead risk assessor's license to conduct a lead risk assessment. It shall be unlawful for any person who does not possess a lead inspector's or lead risk assessor's license to conduct lead abatement clearance testing.

D. It shall be unlawful for any person who does not possess a license as a renovation contractor to perform renovation. It shall be unlawful for any person who does not possess a renovator's license to perform or direct others to perform renovation. It shall be unlawful for any person who does not possess a dust sampling technician's license to perform dust clearance sampling.

E. (Effective until July 1, 2017) It shall be unlawful for any person who is not a certified home inspector pursuant to this chapter and who has not successfully completed the training module required by § 54.1-517.2 to conduct a home inspection on any new residential structure.

E. (Effective July 1, 2017) It shall be unlawful for any individual who does not possess a license as a home inspector issued by the Board to perform a home inspection for compensation on a residential building. It shall be unlawful for any individual who does not possess a home inspector license with the new residential structure endorsement to conduct a home inspection for compensation on any new residential structure. For purposes of this chapter, "new residential structure" means a residential structure for which the first conveyance of record title to a purchaser has not occurred, or of which a purchaser has not taken possession, whichever occurs later.

1987, c. 579, § 54-145.7; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 73; 1993, c. 660; 1994, cc. 185, 911; 1995, cc. 543, 585; 1996, cc. 180, 846; 1997, cc. 560, 885; 1998, c. 739; 2004, c. 133; 2009, c. 819; 2015, c. 411; 2016, cc. 161, 436.

§ 54.1-504. Asbestos supervisor's or worker's license required; exception

After July 1, 1988, it shall be unlawful for an individual who does not have an asbestos supervisor's license or worker's license to work on an asbestos project. No asbestos supervisor's license or worker's license shall be required for a supervisor or worker in the installation, maintenance, repair or removal of asbestos-containing roofing, flooring or siding material, provided that such supervisor or worker shall satisfy any training requirements promulgated by the Board pursuant to § 54.1-501.

1987, c. 579, § 54-145.8; 1988, c. 765; 1989, c. 397; 1993, c. 660 .

§ 54.1-504.1. Notices for handling asbestos

The Department of Professional and Occupational Regulation shall include with every asbestos worker's license a notice, in English and Spanish, containing a summary of the basic worker safety procedures regarding the handling of asbestos and information on how to file a complaint with the Virginia Board for Asbestos, Lead, and Home Inspectors.

2016, c. 252.

§ 54.1-505. Qualification for an asbestos contractor's license

To qualify for an asbestos contractor's license, an applicant shall:

1. Except as provided in § 54.1-504, ensure that each of his employees or agents who will come into contact with asbestos or who will be responsible for an asbestos project is licensed as an asbestos supervisor or worker; and

2. Demonstrate to the satisfaction of the Board that the applicant and his employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Department of Labor and Industry, and the State Air Pollution Control Board covering any part of an asbestos project.

1987, c. 579, § 54-145.9; 1988, cc. 765, 802; 1989, c. 397; 1993, c. 660; 1996, cc. 180, 846.

§ 54.1-506. Repealed
Repealed by Acts 1993, c. 660 .

§ 54.1-507. Repealed
Repealed by Acts 1992, c. 477 .

§§ 54.1-508, 54.1-509. Repealed
Repealed by Acts 1993, c. 660 .

§ 54.1-510. Repealed
Repealed by Acts 1988, c. 802.

§ 54.1-511. Repealed
Repealed by Acts 1993, c. 660 .

§ 54.1-512. Exemptions from licensure
A. In an emergency, the Board may, at its discretion, waive the requirement for asbestos contractor's, supervisor's and worker's licenses.

B. Any employer, and any employee of such employer, who conducts an asbestos project on premises owned or leased by such employer shall be exempt from licensure.

C. Notwithstanding the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), neither the Commonwealth nor any agency or employee of the Commonwealth shall be subject to any liability as the result of a determination made by the Board hereunder.

D. Nothing in this chapter shall be construed as requiring the licensure of a contractor who contracts to undertake a project, a portion of which constitutes an asbestos or lead abatement project or renovation, if all of the asbestos or lead abatement work or renovation is subcontracted to a person licensed to perform such work in accordance with the provisions of this chapter.

E. This chapter shall not apply to any person who performs lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being conducted or a child is residing in the property and has been identified as having an elevated blood-lead level.

F. This chapter shall not apply to renovations of owner-occupied housing constructed before 1978, provided the person performing renovations obtains a statement signed by the owner providing that (i) no child under the age of six or pregnant woman resides in the structure, (ii) the residence is not a child-occupied facility, and (iii) the owner acknowledges that renovations may not include all of the lead-safe work practices contained in the EPA Lead Renovation, Repair, and Painting Program final rule.

G. This chapter shall not apply to any person who performs renovations on (i) housing constructed after January 1, 1978, (ii) housing for the elderly or persons with disabilities, unless a child under the age of six resides or is expected to reside in the structure, or (iii) a structure that does not have bedrooms.

1987, c. 579, § 54-145.10:6; 1988, cc. 765, 807; 1989, c. 397; 1993, c. 660; 1996, cc. 180, 846; 1998, c. 739; 2009, c. 819.

§ 54.1-513. Repealed

Repealed by Acts 1998, c. 739.

§ 54.1-514. Award of contracts by state agencies and political subdivisions

A state agency or a political subdivision shall not award a contract in connection with an asbestos project to a person who does not hold an asbestos contractor's, inspector's, management planner's or project designer's license at the time the bid is submitted unless the general contractor to whom the contract is awarded will be contractually committed to have all asbestos related work performed by its own subcontractors who are appropriately licensed as asbestos contractors, inspectors, management planners or project designers pursuant to this chapter.

1987, c. 579, § 54-145.10:8; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 105; 1996, cc. 180, 846.

§ 54.1-515. Employer discrimination; penalty

Any employer who discriminates against or otherwise penalizes an employee who complains to or cooperates with the Board or any other governmental agency in administering this chapter is subject to the penalties in § 54.1-517.

1987, c. 579, § 54-145.10:9; 1988, c. 765; 1993, cc. 499, 660 .

§ 54.1-516. (Effective until July 1, 2017) Disciplinary actions

A. The Board may reprimand, fine, suspend or revoke (i) the license of a lead contractor, lead inspector, lead risk assessor, lead project designer, lead supervisor, lead worker, asbestos contractor, asbestos supervisor, asbestos inspector, asbestos analytical laboratory, asbestos management planner, asbestos project designer, asbestos project monitor, asbestos worker, renovator, dust sampling technician, or renovation contractor or (ii) the approval of an accredited asbestos training program, accredited lead training program, accredited renovation training program, training manager or principal instructor, if the licensee or approved person or program:

1. Fraudulently or deceptively obtains or attempts to obtain a license or approval;

2. Fails at any time to meet the qualifications for a license or approval or to comply with the requirements of this chapter or any regulation adopted by the Board; or

3. Fails to meet any applicable federal or state standard when performing an asbestos project or service, performing lead-based paint activities, or performing renovations.

B. The Board may reprimand, fine, suspend or revoke the license of, (i) any asbestos contractor who employs or permits an individual without an asbestos supervisor's or worker's license to work on an asbestos project, (ii) any lead contractor who employs or permits an individual without a lead supervisor's or lead worker's license to work on a lead abatement project, or (iii) any renovation contractor who employs or permits an individual without a renovator's license to perform or to direct others who perform renovations.

C. The Board may reprimand, fine, suspend or revoke the certification of a home inspector.

1987, c. 579, § 54-145.10:10; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 823; 1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 1998, c. 739; 2001, c. 723; 2009, cc. 358, 819; 2012, cc. 803, 835.

§ 54.1-516. (Effective July 1, 2017) Disciplinary actions

A. The Board may reprimand, fine, suspend or revoke (i) the license of a lead contractor, lead inspector, lead risk assessor, lead project designer, lead supervisor, lead worker, asbestos contractor, asbestos supervisor, asbestos inspector, asbestos analytical laboratory, asbestos management planner, asbestos project designer, asbestos project monitor, asbestos worker, renovator, dust sampling technician, renovation contractor, or home inspector or (ii) the approval of an accredited asbestos training program, accredited lead training program, accredited renovation training program, training manager or principal instructor, if the licensee or approved person or program:

1. Fraudulently or deceptively obtains or attempts to obtain a license or approval;

2. Fails at any time to meet the qualifications for a license or approval or to comply with the requirements of this chapter or any regulation adopted by the Board; or

3. Fails to meet any applicable federal or state standard when performing an asbestos project or service, performing lead-based paint activities, or performing renovations.

B. The Board may reprimand, fine, suspend or revoke the license of (i) any asbestos contractor who employs or permits an individual without an asbestos supervisor's or worker's license to work on an asbestos project, (ii) any lead contractor who employs or permits an individual without a lead supervisor's or lead worker's license to work on a lead abatement project, or (iii) any renovation contractor who employs or permits an individual without a renovator's license to perform or to direct others who perform renovations.

C. The Board may reprimand, fine, suspend or revoke the license of a home inspector.

1987, c. 579, § 54-145.10:10; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 823; 1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 1998, c. 739; 2001, c. 723; 2009, cc. 358, 819; 2012, cc. 803, 835; 2016, cc. 161, 436.

§ 54.1-516.1. Summary suspension of licenses or approvals; allegations to be in writing

The Board may suspend the license or the approval of any (i) accredited training program, (ii) training manager or (iii) principal instructor of any person holding a license issued by it without a hearing simultaneously with the institution of proceedings for a hearing or an informal fact finding conference, if the relevant board finds that there is a substantial danger to the public health or safety that warrants this action. The Board may meet by telephone conference call when summarily suspending a license or the approval of an accredited training program, training manager or principal instructor 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 licensee or approved individual or training program constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing or an informal fact finding conference shall be provided simultaneously with the summary suspension. Such hearing or conference shall be scheduled within a reasonable time of the date of the summary suspension. Allegations of violations of this section shall be made in accordance with § 54.1-307.1.

2004, c. 222.

§ 54.1-517. Penalties for willful violations

Notwithstanding any other provision of law, any person who willfully violates any provision of this chapter or any regulation related to licensure or training adopted pursuant to this chapter shall be guilty of a Class 1 misdemeanor for the first two violations and a Class 6 felony for a third and each subsequent violation within a three-year period.

In addition, licensed asbestos contractors, asbestos supervisors, asbestos inspectors, asbestos management planners, asbestos project designers, asbestos project monitors, asbestos analytical laboratories and asbestos workers, lead contractors, lead inspectors, lead risk assessors, lead project designers, lead supervisors, lead workers, renovators, dust sampling technicians, renovation contractors, and accredited asbestos training programs, accredited lead training programs, accredited renovator training programs, training managers or principal instructors may be assessed a civil penalty by the Board of not more than $1,000 for an initial violation and $5,000 for each subsequent violation within a three-year period arising from a willful violation of standards established by the Environmental Protection Agency, Occupational Safety and Health Administration, Department of Labor and Industry, or the Divisions of Air Pollution Control and Waste Management of the Department of Environmental Quality in a three-year period.

1987, c. 579, § 54-145.10:11; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 823; 1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 1998, c. 739; 2009, c. 819.

Article 2 - HOME INSPECTORS

§ 54.1-517.1. (Repealed effective July 1, 2017) Applicability

The certification program established under this article shall be voluntary and shall not be construed to restrict or otherwise affect the right of any person to conduct an inspection of a residential building for any purpose; however, no person may (i) refer to the inspection conducted as a "certified home inspection" or (ii) hold himself out as, or use the title of "certified home inspector, " unless he has been certified in accordance with this article. Any person offering to provide or conduct a "certified home inspection" within the meaning of this chapter or through verbal claim, sign, advertisement, or letterhead representing himself as a "certified home inspector" shall be subject to the provisions of § 54.1-111 of this title.

2001, c. 723.

§ 54.1-517.2. (Effective until July 1, 2017) Requirements for certification

The Board may issue a certificate to practice as a certified home inspector in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:

1. Completed any educational requirements as required by the Board;

2. Completed any experience requirements as required by the Board;

3. Passed any written or electronic examination offered or approved by the Board; and

4. If conducting inspections on new residential structures, completed a training module developed by the Board in conjunction with the Department of Housing and Community Development based on the International Residential Code component of the Virginia Uniform Statewide Building Code.

The Board may issue a certificate to practice as a certified home inspector to any applicant who is a member of a national or state professional home inspectors association approved by the Board, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the Board for all applicants.

2001, c. 723; 2015, c. 411.

§ 54.1-517.2. (Effective July 1, 2017) Requirements for licensure

A. The Board shall issue a license to practice as a home inspector in the Commonwealth to:

1. An individual who holds an unexpired certificate as a home inspector issued prior to June 30, 2017; or

2. An applicant who has successfully:

a. Completed the educational requirements as required by the Board;

b. Completed the experience requirements as required by the Board; and

c. Passed the examination approved by the Board.

B. The Board shall issue a license with the new residential structure endorsement to any applicant who completes a training module developed by the Board in conjunction with the Department of Housing and Community Development based on the International Residential Code component of the Virginia Uniform Statewide Building Code.

2001, c. 723; 2015, c. 411; 2016, cc. 161, 436.

Article 3 - MOLD INSPECTORS AND REMEDIATORS

§§ 54.1-517.3 through 54.1-517.5. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 56.

Chapter 5.1 - ATHLETE AGENTS [Repealed]

§§ 54.1-518 through 54.1-525. Repealed

Repealed by Acts 1992, c. 282 .

Chapter 6 - AUCTIONEERS

§ 54.1-600. Definitions

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

"Absolute auction" means an auction where at the time of the auction sale the real or personal property to be sold will pass to the highest bidder regardless of the amount of the highest and last bid.

"Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and acceptance by the auctioneer of the highest or most favorable offer.

"Auction firm" means any corporation, partnership or entity, except a sole proprietorship, performing any of the acts of an auctioneer as defined in this section.

"Auctioneer" means any person who conducts or offers to conduct an auction.

"Board" means the Auctioneers Board.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Goods" means any chattels, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale.

"Person" means any natural person, association, partnership, or corporation, and the officers, directors, and employees of a corporation.

"Virginia licensed auctioneer" means any auctioneer who meets the requirements for licensure as prescribed by the Board.

1982, c. 538, § 54-824.2; 1983, c. 522; 1986, c. 61; 1988, c. 765; 1991, c. 299; 2003, c. 367.

§ 54.1-601. Exemptions

The provisions of this chapter and the terms "Virginia licensed auctioneer," "auctioneer" or "auction firm," as defined in § 54.1-600, shall not apply to:

1. Any person who auctions his own property, whether owned or leased, provided his regular business is not as an auctioneer;

2. Any person who is acting as a receiver, trustee in bankruptcy, guardian, conservator, administrator, or executor, or any person acting under order of a court;

3. A trustee acting under a trust agreement, deed of trust, or will;

4. An attorney-at-law licensed to practice in the Commonwealth of Virginia acting pursuant to a power of attorney;

5. Sales at auction conducted by or under the direction of any public authority, or pursuant to any judicial order or decree;

6. Sale of livestock at a public livestock market authorized by the Commissioner of Agriculture and Consumer Services;

7. Leaf tobacco sales conducted in accordance with the provisions of § 3.1-336;

8. Sale at auction of automobiles conducted under the provisions of § 46.2-644.03 or by a motor vehicle dealer licensed under the provisions of Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2;

9. Sale at auction of a particular brand of livestock conducted by an auctioneer of a livestock trade association;

10. Sales conducted by and on behalf of any charitable, religious, civic club, fraternal, or political organization if the person conducting the sale receives no compensation, either directly or indirectly, therefor and has no ownership interest in the merchandise being sold or financial interest in the entity providing such merchandise;

11. Sales, not exceeding one sale per year, conducted by or on behalf of (i) a civic club or (ii) a charitable organization granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code; or

12. Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to Titles 8.1A through 8.10 and Chapter 23 (§ 55-416 et seq.) of Title 55.

1982, c. 538, § 54-824.3; 1983, cc. 261, 522; 1986, c. 61; 1988, c. 765; 1991, c. 299; 1995, c. 227; 1997, c. 801; 2009, c. 664; 2014, cc. 21, 684.

§ 54.1-602. Auctioneers Board; membership, meetings and powers

A. The Auctioneers Board shall be composed of five members as follows: three shall be Virginia licensed auctioneers and two shall be citizen members. Board members shall serve four-year terms.

The Board shall meet at least once each year for the purpose of transacting business. Special meetings of the Board may be held at the discretion of the Director.

B. The Board shall have the following authority and responsibilities:

1. Establish regulations to obtain and retain licensure of auctioneers.

2. Make all case decisions regarding eligibility for initial licensure and renewal thereof.

3. To fine, suspend, deny renewal or revoke for cause, as defined in regulation, any license.

4. To examine auctioneers for licensure.

1982, c. 538, §§ 54-824.4, 54-824.7; 1983, c. 522, § 54-824.9:3; 1988, cc. 42, 765; 1991, c. 299; 2012, c. 522.

§ 54.1-603. License required; requirements for licensure; nonresident applicants

A. Unless exempted by § 54.1-601, no person or firm shall sell at auction without being licensed by the Board.

B. Any auctioneer desiring to obtain a license may apply to the Board and shall establish to the satisfaction of the Board that he:

1. Is a resident of Virginia and meets the application fee requirements set by the Board;

2. Is covered by a surety bond, executed by a surety company authorized to do business in this Commonwealth, in a reasonable amount to be fixed by the Board, conditioned upon the faithful and honest conduct of his business or employment;

3. Has successfully completed a course of study at a school of auctioneering which has obtained course approval from the Board or an equivalent course; and

4. Has passed the Virginia Licensed Auctioneer's Examination, administered by the Auctioneers Board.

C. A nonresident of the Commonwealth may be licensed as an auctioneer by meeting one of the following requirements: (i) conform to the provisions of this chapter and regulations of the Board with reference to resident auctioneers or (ii) hold a valid auctioneer's license or certificate in another state with which reciprocity has been established by the Board. Nonresident applicants shall also file with the Board an irrevocable consent that service of process upon the Director is as valid and binding as service of process upon the applicant.

Any process or pleading served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the auctioneer at the last known address.

1983, c. 522, § 54-824.9:1; 1986, c. 61; 1988, c. 765; 1991, c. 299; 1996, cc. 438, 822; 1997, c. 281; 2010, c. 91.

§ 54.1-603.1. Continuing education

A. The Board shall promulgate regulations governing continuing education requirements for auctioneers licensed by the Board. Such regulations shall require the completion of the equivalent of at least six hours of Board-approved continuing education courses for any license renewal or reinstatement, except that no continuing education shall be required for any auctioneer licensed by the Board for 25 years or more and who is 70 years of age or older. The Board shall establish criteria for continuing education courses, including but not limited to (i) content and subject matter of continuing education courses; (ii) curriculum of required continuing education courses; (iii) standards and procedures for the approval of courses, course sponsors, and course instructors; (iv) methods of instruction for continuing education courses; and (v) the computation of course credit. Any continuing education courses completed by an auctioneer pursuant to a requirement of the Certified Auctioneers Institute or participation in the educational programs sponsored by the National Auctioneers Association or Virginia Auctioneers Association shall satisfy the continuing education requirement of this section.

B. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship.

2004, c. 956; 2016, c. 504.

§ 54.1-604. Repealed

Repealed by Acts 1991, c. 299 .

§ 54.1-605. Taxation of auctioneer

An auctioneer may not have a local license tax imposed by any county, city, or town except that in which his office is maintained. If a branch office is maintained elsewhere in Virginia, a local license tax may be imposed by the county, city or town in which the branch office is located, pursuant to §§ 58.1-3707 and 58.1-3709.

1982, c. 538, § 54-824.15; 1988, c. 765.

§ 54.1-606. Unlawful to advertise as an auctioneer

It shall be unlawful for any person not licensed under the provisions of this chapter to advertise that he is in the auction business or to hold himself out to the public as an auctioneer.

1982, c. 538, § 54-824.19; 1983, c. 522; 1988, c. 765; 1991, c. 299 .

§ 54.1-607. Advertising; absolute auctions involving real property

A. No advertisements for any auction sale of personal or real property shall contain false, misleading, or deceptive statements, with respect to types or conditions of merchandise offered at auction, why merchandise is being sold, who has ownership, where the merchandise was obtained, or the terms and conditions of the auction and sale.

B. No auctioneer shall advertise an auction sale of real property as "absolute" unless all lots included in the sale meet that criteria.

2003, c. 367.

Chapter 7 - BARBERS AND COSMETOLOGISTS

§ 54.1-700. Definitions

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

"Barber" means any person who shaves, shapes or trims the beard; cuts, singes, shampoos or dyes the hair or applies lotions thereto; applies, treats or massages the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays or other preparations in connection with shaving, cutting or trimming the hair or beard, and practices barbering for compensation and when such services are not performed for the treatment of disease.

"Barbering" means any one or any combination of the following acts, when done on the human body for compensation and not for the treatment of disease, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. The term "barbering" shall not apply to the acts described hereinabove when performed by any person in his home if such service is not offered to the public.

"Barber instructor" means any person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of barbering.

"Barbershop" means any establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.

"Board" means the Board for Barbers and Cosmetology.

"Body-piercer" means any person who for remuneration penetrates the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing" means the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing salon" means any place in which a fee is charged for the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing school" means a place or establishment licensed by the Board to accept and train students in body-piercing.

"Cosmetologist" means any person who administers cosmetic treatments; manicures or pedicures the nails of any person; arranges, dresses, curls, waves, cleanses, cuts, shapes, singes, waxes, tweezes, shaves, bleaches, colors, relaxes, straightens, or performs similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances unless such acts as adjusting, combing, or brushing prestyled wigs or hairpieces do not alter the prestyled nature of the wig or hairpiece, and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: administering cosmetic treatments; manicuring or pedicuring the nails of any person; arranging, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include hair braiding or such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece.

"Cosmetology instructor" means a person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of cosmetology.

"Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Esthetician" means a person who engages in the practice of esthetics for compensation.

"Esthetics" includes, but is not limited to, the following practices of administering cosmetic treatments to enhance or improve the appearance of the skin: cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating, or performing any other similar procedure on the skin of the human body or scalp by means of cosmetic preparations, treatments, any non-laser device, electrical, mechanical, or manual, for care of the skin; applying make-up or eyelashes to any person, tinting or perming eyelashes and eyebrows, and lightening hair on the body except the scalp; and removing unwanted hair from the body of any person by the use of tweezing, chemical, or mechanical means. However, "esthetics" is not a healing art and shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, or chiropractic. The terms "healing arts," "practice of medicine," "practice of osteopathic medicine," and "practice of chiropractic" shall mean the same as those terms are defined in § 54.1-2900.

"Esthetics instructor" means a licensed esthetician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of esthetics.

"Esthetics spa" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein esthetics is offered or practiced on a regular basis for compensation under regulations of the Board.

"Master esthetician" means a licensed esthetician who, in addition to the practice of esthetics, offers to the public for compensation, without the use of laser technology, lymphatic drainage, chemical exfoliation, or microdermabrasion, and who has met such additional requirements as determined by the Board to practice lymphatic drainage, chemical exfoliation with products other than Schedules II through VI controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq.), and microdermabrasion of the epidermis.

"Nail care" means manicuring or pedicuring natural nails or performing artificial nail services.

"Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein nail care is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Nail school" means a place or establishment licensed by the board to accept and train students in nail care.

"Nail technician" means any person who for compensation manicures or pedicures natural nails, or who performs artificial nail services for compensation, or any combination thereof.

"Nail technician instructor" means a licensed nail technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of nail care.

"Physical (wax) depilatory" means the wax depilatory product or substance used to remove superfluous hair.

"School of cosmetology" means a place or establishment licensed by the Board to accept and train students and which offers a cosmetology curriculum approved by the Board.

"School of esthetics" means a place or establishment licensed by the Board to accept and train students and which offers an esthetics curriculum approved by the Board.

"Tattoo parlor" means any place in which tattooing is offered or practiced.

"Tattoo school" means a place or establishment licensed by the Board to accept and train students in tattooing.

"Tattooer" means any person who for remuneration practices tattooing.

"Tattooing" means the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

"Wax technician" means any person licensed by the Board who removes hair from the hair follicle using a physical (wax) depilatory or by tweezing.

"Wax technician instructor" means a licensed wax technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of waxing.

"Waxing" means the temporary removal of superfluous hair from the hair follicle on any area of the human body through the use of a physical (wax) depilatory or by tweezing.

"Waxing salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein waxing is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Waxing school" means a place or establishment licensed by the Board to accept and train students in waxing.

1962, c. 639, § 1, § 54-83.2; 1966, c. 610; 1973, c. 86; 1974, c. 534; 1988, c. 765; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829; 2012, cc. 803, 835.

§ 54.1-701. Exemptions

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of the Commonwealth to practice medicine and surgery or osteopathy or chiropractic;

2. Registered nurses licensed to practice in the Commonwealth;

3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of individuals with mental illness or intellectual disability, or for care and treatment of geriatric patients, as barbers, cosmetologists, wax technicians, nail technicians, estheticians, barber instructors, cosmetology instructors, wax technician instructors, nail technician instructors, or esthetics instructors who practice only on inmates of or patients in such sanatoria or institutions;

4. Persons licensed as funeral directors or embalmers in the Commonwealth;

5. Gratuitous services as a barber, nail technician, cosmetologist, wax technician, tattooer, body-piercer, or esthetician;

6. Students enrolled in an approved school taking a course in barbering, nail care, cosmetology, waxing, tattooing, body-piercing, or esthetics;

7. Persons working in a cosmetology salon whose duties are expressly confined to the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;

8. Apprentices serving in a barbershop, nail salon, waxing salon, cosmetology salon, or esthetics spa licensed by the Board in accordance with the Board's regulations;

9. Schools of barbering, nail care, waxing, or cosmetology in public schools; and

10. Persons whose activities are confined solely to applying make-up, including such activities that are ancillary to applying make-up.

1962, c. 639, § 4, § 54-83.5; 1968, c. 622; 1988, c. 765; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829; 2012, cc. 476, 507, 803, 835.

§ 54.1-702. Board for Barbers and Cosmetology; membership; officers; quorum

The Board for Barbers and Cosmetology shall be composed of 10 members as follows: two members shall be licensed barbers, one of whom may be an owner or operator of a barber school; two members shall be licensed cosmetologists, at least one of whom shall be a salon owner and one of whom may be an owner or operator of a cosmetology school; one member shall be a licensed nail technician or a licensed cosmetologist engaged primarily in the practice of nail care, each of whom shall have been licensed in their respective professions for at least three years immediately prior to appointment; one member shall be either a licensed tattooer or a licensed body-piercer; two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school; and two citizen members. The terms of Board members shall be four years. No member shall serve for more than two full successive terms. The Board shall elect a chairman and a vice-chairman. A majority of the Board shall constitute a quorum.

1962, c. 639, § 21, § 54-83.22; 1974, c. 534; 1979, c. 327; 1981, c. 447; 1988, cc. 42, 765; 2000, c. 726; 2002, c. 869; 2004, c. 945; 2005, c. 829; 2010, c. 91.

§ 54.1-703. License required

No person shall offer to engage in or engage in barbering, cosmetology, nail care, waxing, tattooing, body-piercing, or esthetics without a valid license issued by the Board, except as provided in § 54.1-701.

1979, c. 408, § 54-83.22:1; 1988, c. 765; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829; 2012, cc. 803, 835.

§ 54.1-703.1. Waiver of examination; wax technicians

The Board shall waive the examination requirements for licensure as a wax technician for any individual who (i) makes application for licensure between July 1, 2002, and July 1, 2003; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions:

1. Has at least three years of documented work experience as a wax technician that is deemed satisfactory by the Board;

2. Has completed a training program that is deemed satisfactory by the Board; or

3. Holds an unexpired certificate of registration, certification, or license as a wax technician issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.

2002, c. 797.

§ 54.1-703.2. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 54.

§ 54.1-703.3. Waiver of examination; estheticians

The Board shall waive the examination requirements for licensure as an esthetician or master esthetician for any individual who (i) makes application for licensure by July 31, 2009; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions:

1. Has at least three years of documented work experience as an esthetician or a master esthetician completed prior to July 1, 2008, that is deemed satisfactory by the Board;

2. Has completed a training program prior to July 1, 2008, that is deemed satisfactory by the Board; or

3. Holds an unexpired certificate of registration, certification, or license as an esthetician or a master esthetician issued to him prior to July 1, 2008, on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States, or the District of Columbia.

2005, c. 829; 2009, cc. 166, 328.

§ 54.1-704. Temporary licenses

The Board may issue a temporary license to any person who is eligible for examination. Persons issued a temporary license shall be subject to the regulations of the Board.

The Board shall promulgate regulations consistent with this section to permit individuals to be granted temporary licenses for a specified period of time.

1984, c. 220, § 54-83.22:2; 1988, c. 765; 2000, c. 726.

§ 54.1-704.1. License required for barbershop, cosmetology salon, nail care salon, waxing salon, tattoo parlor, body-piercing salon, and esthetics spa

No individual or entity shall operate a barbershop, cosmetology salon, nail care salon, waxing salon, tattoo parlor, body-piercing salon, or esthetics spa without a valid license issued by the Board.

The provisions of this section shall not apply to a licensed barber, cosmetologist, nail technician, waxing technician, tattooer, body-piercer, or esthetician who does not have an ownership interest in a licensed barbershop, cosmetology salon, nail care salon, waxing salon, tattoo parlor, body-piercing salon, or esthetics spa in which he is employed.

2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829; 2012, cc. 803, 835.

§ 54.1-704.2. License required for schools of barbering, cosmetology, nail care, waxing, tattooing, body-piercing, or esthetics

Except as provided in § 54.1-701, no person, firm or corporation shall operate or attempt to operate a school of barbering, cosmetology, nail care, waxing, tattooing, body-piercing, or esthetics unless licensed by the Board pursuant to its regulations.

2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829; 2012, cc. 803, 835.

§ 54.1-705. Inspections

A. Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, may inspect each barbershop, cosmetology salon, waxing salon, nail care salon, tattoo parlor, body-piercing salon, and esthetics spa in the Commonwealth regularly. Any infractions shall be immediately reported to the Health Department and the Director of the Department of Professional and Occupational Regulation for disciplinary action.

B. The Board may inspect barbershops, barber schools, cosmetology salons and schools, waxing salons and schools, nail care salons and schools, tattoo parlors and schools, body-piercing salons and schools, and esthetics spas and schools for compliance with regulations promulgated by the Board.

C. The Board shall specify procedures for enforcement of compliance with the disease control and disclosure requirements of § 18.2-371.3, including unannounced inspections by appropriate personnel.

D. The Board or the Virginia Department of Health, or an affiliated local health department, may regulate the sanitary condition of the personnel, equipment and premises of tattoo parlors and body-piercing salons.

1962, c. 639, § 26, § 54-83.27; 1974, c. 534; 1988, c. 765; 1993, c. 499; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829; 2012, cc. 803, 835.

§ 54.1-706. Different requirements for licensure

The Board shall have the discretion to impose different requirements for licensure for the practice of barbering, cosmetology, nail care, waxing, tattooing, body-piercing, and esthetics.

2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829; 2012, cc. 803, 835.

Chapter 8 - BOXING AND WRESTLING MATCHES [Repealed]

§§ 54.1-800 through 54.1-827. Repealed

Repealed by Acts 1998, c. 895.

Chapter 8.1 - BOXING AND WRESTLING EVENTS

§ 54.1-828. Definitions

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

"Amateur" means an individual who has never participated in a boxing, martial arts, or professional wrestling event for money, compensation, or reward other than a suitably inscribed memento.

"Boxer" means a person competing in the sport of boxing.

"Boxing" means the contact sport of attack or defense using fists.

"Cable television system" means any facility consisting of a set of closed transmission paths and associated equipment designed to provide video programming to multiple subscribers when subscriber interaction is required to select a specific video program for an access fee established by the cable television system for that specific video program.

"Contractor" means any person who has been recognized by the Director, through a contract pursuant to § 54.1-832, as an appropriate responsible party to provide services to assist the Commonwealth in complying with the provisions of this chapter.

"Department" means the Department of Professional and Occupational Regulation or its successor.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Event" means any boxing, martial arts, or professional wrestling show that includes one or more bouts, contests, or matches.

"Exhibition" means any occurrence in which boxers or martial artists show or display skills without striving to win.

"Manager" means any person who serves as a representative or agent of a boxer, martial artist, or professional wrestler to arrange for his participation in an event.

"Martial artist" means a person competing in the sport of martial arts.

"Martial arts" or "mixed martial arts" means any of several Asian arts of combat or self-defense, alone or in combination, including but not limited to aikido, karate, judo, muay thai, or tae kwon do, usually practiced as sport and which may involve the use of striking weapons.

"Matchmaker" means any person who proposes, selects, arranges for, or in any manner procures specific individuals to be contestants in an event.

"Person" means a natural person, corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other entity.

"Professional" means a person who participates or has ever participated for money, compensation, or reward other than a suitably inscribed memento in any boxing, martial arts, or professional wrestling event.

"Professional wrestler" means any professional participating in professional wrestling.

"Professional wrestling" means an event in which contestants incorporate the sport of wrestling into choreographed performances.

"Promote" or "promotion" means to organize, arrange, publicize, or conduct an event or exhibition in the Commonwealth.

"Promoter" means any person who undertakes to promote an event or exhibition.

"Regulant" means any person required by this chapter to obtain a prior authorization from the Department.

"Sanctioning organization" means an entity approved by the Director pursuant to § 54.1-829.1.

"Trainer, " "second" or "cut man" means an individual who undertakes to assure the well-being of a boxer or martial artist by providing instruction or advice concerning techniques or strategies of boxing or martial arts, and who may work in the corner with a boxer or martial artist between the rounds of a match to assure his well-being and provide necessary equipment and advice concerning match participation.

"Wrestler" means any person competing or participating as an opponent in wrestling.

"Wrestling" means any of several styles of physical competition in which individuals attempt to subdue or unbalance an opponent, including Greco-Roman, freestyle, grappling, or submission, usually practiced as a sport.

1998, c. 895; 2005, c. 287; 2015, cc. 216, 264; 2016, c. 756.

§ 54.1-829. Authorization from Director required; bond; physical examination; emergency medical services vehicles; physician; and health insurance

A. No person shall act as a promoter, matchmaker, trainer, boxer, martial artist, or professional wrestler in the Commonwealth without first having obtained authorization for such activity from the Department or sanctioning organization approved by the Director pursuant to § 54.1-829.1 and such authorization remains in full force and effect.

B. No authorization to act as a promoter shall be granted unless the applicant executes and files with the Department a bond, in such penalty as the Department shall determine through regulation, conditioned on the payment of the fees and penalties imposed by this chapter and for the fulfillment of contracts made with professional contestants in accordance with Department regulations. This subsection shall not apply to a promoter applying to conduct an amateur-only event under the authority of a sanctioning organization approved by the Director pursuant to § 54.1-829.1.

C. Each boxer and martial artist shall, and each professional wrestler may, be examined prior to entering the ring by a physician who has been licensed to practice medicine in the Commonwealth for at least five years. The physician shall be appointed by the Department or sanctioning organization and shall certify in writing that the contestant's physical condition is such that he is physically able to engage in the contest.

D. No event in which boxers or martial artists are contestants shall be conducted without the continuous presence at ringside of a physician who has been licensed to practice medicine in the Commonwealth for at least five years, and unless an emergency medical services vehicle is at the site of the event.

E. No boxer or martial artist shall participate in any event unless covered by a health insurance policy with minimum coverage in an amount determined by Department regulation.

1998, c. 895; 2007, c. 853; 2015, cc. 216, 264, 502, 503; 2016, c. 756.

§ 54.1-829.1. Sanctioning organization; amateur martial arts events

A. No event in which amateur participants compete in martial arts shall be authorized in the Commonwealth unless the amateur event is conducted by a sanctioning organization approved by the Director. Only the results of amateur events conducted by a sanctioning organization in good standing and in compliance with this section shall be recognized for purposes of reporting bout results to a national database or official registry. Every sanctioning organization, insofar as practicable, shall observe and apply the unified rules adopted by the Association of Boxing Commissions. Notwithstanding any other provision of law or regulation, for purposes of amateur martial arts events, weight classes and bout rules governing round length, judging, and scoring shall conform with the Association of Boxing Commissions unified rules.

B. No amateur martial artist shall compete in an event who has:

1. Not attained the age of 18 years;

2. Been knocked out in the 60 days immediately preceding the date of the event;

3. Been technically knocked out in the 30 days preceding the date of the event;

4. Been a contestant in an event consisting of (i) more than six rounds during the 15 days preceding the date of the event or (ii) six or fewer rounds during the seven days preceding the event;

5. Suffered a cerebral hemorrhage or other serious physical injury;

6. Been found to be blind or vision impaired in one or both eyes;

7. Been denied a license or approval to compete by another jurisdiction for medical reasons;

8. Failed to provide negative test results, dated within 180 days preceding the date of the event, for the following: (i) antibodies to the human immunodeficiency virus; (ii) hepatitis B surface antigen (HBsAg); and (iii) antibodies to the hepatitis C virus; or

9. Failed to provide written certification from a licensed physician, dated within 180 days preceding the date of the event, attesting to the contestant's good physical health and absence of any preexisting conditions or observed abnormalities that would prevent participation in the event. The examination performed by the ringside physician at the event pursuant to clause (ii) of subdivision C 3 shall not satisfy this requirement.

C. For each amateur martial arts event, the sanctioning organization shall:

1. Review the records, experience, and consecutive losses for each amateur martial artist prior to each event to determine, to the extent possible, that contestants scheduled to compete are substantially equal in skills and ability;

2. Verify that each amateur martial artist scheduled to compete is covered by health insurance;

3. Appoint a physician licensed to practice medicine in the Commonwealth for at least five years to remain at ringside on a continuous basis. Duties of the ringside physician shall include (i)

conducting a physical examination of each referee immediately prior to the event to assure his fitness to act in such capacity, (ii) conducting a physical examination and taking a medical history of each amateur martial artist prior to the contestant's entering the ring and certifying the contestant's physical condition, (iii) signaling the referee immediately in the event that an injury is observed, (iv) rendering immediate medical aid to any amateur martial artist injured during an event, and (v) ensuring that all substances in the possession of seconds, trainers, or cut men are appropriate for use on amateur martial artists during the course of the event;

4. Assign a sufficient number of qualified officials, including locker room inspectors, judges, timekeepers, and referees, to protect the health and safety of amateur martial artists and the public. Duties of the referee shall include (i) providing prefight instructions to the contestants; (ii) ensuring that each amateur martial artist is wearing gloves supplied by the sanctioning organization or event promoter that are in new or good condition, weighing between four and six ounces; (iii) exercising supervision over the conduct of the bout and taking immediate corrective action when necessary; (iv) immediately stopping any bout when, in his judgment, one contestant is outclassed by the other, injured, or otherwise unable to continue safely; (v) striving to perform his duties in a manner that does not impede the fair participation of either contestant; (vi) consulting, when he deems appropriate, with the ringside physician on the advisability of stopping the bout if either contestant appears injured or unable to continue; (vii) counting for knockdowns and knockouts, determining fouls and stopping contests, and immediately stopping any bout if one or both contestants are not putting forth their best effort; and (viii) ensuring the health and well-being of the amateur martial artists to the greatest extent possible; and

5. Require a fully equipped emergency medical services vehicle with a currently trained ambulance crew at the site of every amateur event for its entire duration.

D. Any sanctioning organization seeking approval under this section shall make a written application on a form prescribed by the Director. The application shall be accompanied by a fee of $500. The Director shall annually approve sanctioning organizations whose applications satisfactorily demonstrate evidence of standards and operations in place that are at least as rigorous as and limited to those required by this section. Following an informal fact-finding proceeding conducted pursuant to § 2.2-4019, the Director may withdraw his approval of any sanctioning organization that has failed to comply with this section based on (i) the review of the annual report submitted by the sanctioning organization or (ii) review of a complaint received pursuant to subdivision A 8 of § 54.1-201 or § 54.1-307.1.

E. A sanctioning organization seeking approval from the Director shall provide documented evidence (i) of operation as a business for at least the immediately preceding three years; (ii) of at least five years of experience as a sanctioning organization representing at least two different promotions during such five-year period or that the principal officers have at least eight years of experience working as a referee or head official for an established sanctioning organization without adverse financial or disciplinary action in any jurisdiction; (iii) indicating that none of its officers,

employees, or agents, directly or indirectly, has any pecuniary interest in, or holds any position with, any business associated with a promoter or otherwise operates for the sole benefit of a single promoter; and (iv) of assurance that events will be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety.

F. Each approved sanctioning organization shall submit an annual report to the Director on or before February 1, with a summary of the events conducted for the preceding calendar year. The Director may address any operational or compliance issues with the sanctioning organization consistent with and in furtherance of the objectives of this section. The Director shall not intervene in the internal activities of a sanctioning organization except to the extent necessary to prevent or cure violations of this section or any statute governing the persons or activities regulated pursuant to this chapter.

G. The Commonwealth, the Director, the Department, and any employee or representative shall be indemnified and held harmless from any liability resulting from or caused by a sanctioning organization or persons conducting activities on behalf of such regulant.

2015, cc. 216, 264; 2016, c. 756.

§ 54.1-830. Exemptions

The provisions of this chapter shall not apply to:

1. Amateur wrestling bouts;

2. Amateur exhibitions and the amateur participants therein;

3. Engagements involving amateur martial arts that are conducted by or held under the sponsorship of (i) any elementary or secondary school or public or private institution of higher education located in the Commonwealth, (ii) the Department of Corrections involving inmates of any state correctional institution, or (iii) the United States Olympic Committee; or

4. Amateur boxing.

1998, c. 895; 2015, cc. 216, 264; 2016, c. 756.

§ 54.1-831. Powers and duties of the Department

The Department shall administer and enforce the provisions of this chapter. In addition to the powers and duties otherwise conferred by law, the Director shall have the powers and duties of a regulatory board as contained in §§ 54.1-201 and 54.1-202, and shall have the power and duty to:

1. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which implement the federal Professional Boxing Safety Act of 1996 (15 U.S.C. § 6301 et seq.) and protect the public against incompetent, unqualified, unscrupulous or unfit persons engaging in the activities regulated by this chapter.

The regulations shall include requirements for (i) initial authorization and renewal of the authorization; (ii) authorization and conduct of events; (iii) standards of practice for persons arranging,

promoting, conducting, supervising, and participating in events; (iv) grounds for disciplinary actions against regulants; (v) records to be kept and maintained by regulants; (vi) the manner in which fees are to be accounted for and submitted to the Department, provided, however, that no gate fee shall be required for amateur-only events conducted by a sanctioning organization approved by the Director pursuant to § 54.1-829.1; and (vii) minimum health coverage for injuries sustained in a boxing or martial arts match. The Department shall have direct oversight of professional events to assure the safety and well-being of boxers, martial artists, and professional wrestlers, except that those portions of an event containing amateur bouts shall be conducted under the oversight of a sanctioning organization. Sanctioning organizations shall have sole responsibility for direct oversight of amateur-only events in which martial artists compete.

2. Charge each applicant for authorization and for renewals of authorization a nonrefundable fee subject to the provisions of § 54.1-113 and subdivision A 4 of § 54.1-201. A sanctioning organization shall be subject to the application fee provisions of subsection C of § 54.1-829.1.

3. Conduct investigations to determine the suitability of applicants for authorization and to determine the regulant's compliance with applicable statutes and regulations.

4. Conduct investigations as to whether monopolies, combinations, or other circumstances exist to restrain matches or exhibitions of boxing, martial arts, or professional wrestling anywhere in the Commonwealth. The Attorney General may assist investigations at the request of the Department.

5. Exercise jurisdiction over all boxing, martial arts, and professional wrestling conducted within the Commonwealth by any person, except where otherwise exempted.

1998, c. 895; 2010, c. 764; 2012, c. 769; 2015, cc. 216, 264; 2016, c. 756.

§ 54.1-831.01. Boxing, Martial Arts, and Professional Wrestling Advisory Board

A. The Boxing, Martial Arts, and Professional Wrestling Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government to advise the Director on matters relating to boxing, martial arts, and professional wrestling events in the Commonwealth.

B. The Board shall consist of seven members appointed by the Director as follows: one representative of the sport of boxing; one representative of the sport of professional wrestling; one representative of the sport of martial arts; one representative of either the sport of boxing, martial arts, or professional wrestling; one member who is a martial arts instructor who has obtained the rank of black belt or higher; and two citizen members. All members shall be residents of the Commonwealth. All appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive full terms.

C. The Board shall elect its chairman and vice-chairman from among its members. The Board shall meet at least once each year to conduct its business and upon the call of the Director or chair of the Board. Four members shall constitute a quorum.

D. Members of the Board shall receive no compensation for their services, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

E. Such staff support as is necessary for the conduct of the Board's business shall be furnished by the Department.

2007, c. 853; 2012, c. 522; 2015, cc. 216, 264.

§ 54.1-831.1. Summary suspension of boxing license

When required in order to comply with applicable federal law, the Department may suspend the license of any person holding a license as a boxer on medical grounds or when there is substantial danger to the public health or safety without a hearing or informal fact-finding conference. Institution of a proceeding for a hearing or conference shall be provided simultaneously with the summary suspension. The hearing or conference shall be scheduled within a reasonable time of the date of the summary suspension. The suspension shall remain in effect only so long as the medical grounds or danger to the public health or safety shall exist.

2002, c. 33.

§ 54.1-832. Director authorized to contract for certain services; award of contract; authority when no contract is in effect

A. The Director may contract with a private person, firm, corporation or association to provide any or all of the following services on behalf of the Department: examining and recommending licensure, investigating and ensuring that events are conducted in compliance with statutes and regulations, performing clerical duties, collecting fees, maintaining records, developing proposed regulations in accordance with Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, and recommending enforcement actions in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

B. The Director shall procure any or all of such services in accordance with the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). Prior to the award of such contract, a proposer shall demonstrate, to the satisfaction of the Director:

1. Personnel and financial resources necessary to carry out the provisions of the contract;

2. Adequate indemnification to protect the Commonwealth and its agencies and instrumentalities from all claims and losses incurred as a result of the contract;

3. Compliance with all applicable federal, state, and local laws;

4. Ability to develop, implement, and maintain the internal operations necessary to carry out the provisions of the contract; and

5. Ability to meet any other qualifications the Director deems appropriate in the procurement process.

C. Any contract awarded in accordance with this section shall not exceed a three-year term, but may be renewed annually upon the approval of the Director. The Director shall be the signatory to the contract on behalf of the Commonwealth.

D. Nothing herein is intended to deprive the contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

E. Nothing herein is intended to deprive the Director of his authority to carry out the requirements of this chapter when no contract is in effect.

1998, c. 895.

§ 54.1-833. Reports; cable television systems; fee on receipts

A. Each promoter shall furnish to the Department, within twenty-four hours after the completion of each event, a written and verified report on the form provided by the Department showing the number of tickets sold, unsold and given away and the amount of gross proceeds thereof for such events originating in the Commonwealth, and its total gross receipts from the sale of rights to distribute in any manner such event by any video, telephonic or other communication method involving the control of electrons or other charge carriers for such live events originating in the Commonwealth. Within the twenty-four-hour period, the promoter shall pay to the Department a fee of (i) five percent of the first $100,000 of its total gross receipts; and (ii) two and one-half percent of the remainder of its total gross receipts. Records of the promoter shall be subject to audit by the Department.

B. Each cable television system or other multichannel video programming service shall report to the Department in writing the name and address of each person from whom it obtains the rights to provide a live event originating in the Commonwealth.

C. The Department shall hold all license fees in a special fund of the state treasury subject to appropriation of the General Assembly. Payments from this fund shall be made to the contractors for their services on behalf of the Commonwealth. No payment shall exceed the balance of the fund. The Department shall draw from the fund to cover any expenses associated with the provisions of this chapter.

1998, c. 895; 2015, cc. 216, 264.

§ 54.1-834. Prohibited activities; penalties

A. No betting or wagering shall be permitted at an event or exhibition before, during, or after the event in the building where the event is held.

B. No person shall participate in a sham or fake boxing or martial arts contest. The Department shall have the authority to order, without a hearing, the person controlling the purse to hold the distribution to contestants, promoters, and trainers pending a public hearing by the Department.

The Department shall, simultaneously with the issuance of such order to retain the share or purse, institute proceedings for a hearing to determine whether a sham or fake boxing or martial arts contest has occurred.

C. It shall be a Class 1 misdemeanor for any person to violate this section or any statute or regulation governing the persons or activities regulated pursuant to this chapter.

D. The third or any subsequent conviction for violating any provision of this section during a 36-month period shall constitute a Class 6 felony.

1998, c. 895; 2015, cc. 216, 264; 2016, c. 756.

§ 54.1-835. Repealed

Repealed by Acts 2015, cc. 216 and 264, cl. 2, effective October 1, 2015.

Chapter 9 - BRANCH PILOTS

Article 1 - BOARD FOR BRANCH PILOTS

§ 54.1-900. Definitions

For the purposes of this chapter, unless the context requires a different meaning:

"Board" means the Board for Branch Pilots.

"Branch pilots" means pilots who have qualified and been licensed in accordance with the provisions of § 54.1-905.

"Limited branch pilots" means pilots who have qualified and been licensed in accordance with the provisions of § 54.1-909.

"Pilot" means branch pilot and limited branch pilot.

Code 1950, § 54-525; 1988, c. 765.

§ 54.1-901. Appointment and removal of members; quorum; clerk

The Board for Branch Pilots shall consist of nine members to be appointed as follows: the Circuit Court of the City of Hampton shall appoint three persons, only one of whom shall be a branch pilot, and the Circuit Court of the City of Norfolk shall appoint four persons, only two of whom shall be branch pilots, and the Circuit Court of the City of Portsmouth shall appoint two persons, only one of whom shall be a branch pilot. The court which appointed a member may remove him for incapacity, neglect of duty or misconduct and may fill the vacancy.

Four members of the Board shall constitute a quorum. The Board shall appoint a clerk, who shall keep a record of the Board's proceedings.

Code 1950, §§ 54-527, 54-528, 54-530, 54-531; 1978, c. 834; 1988, c. 765.

§ 54.1-902. Regulations; suspension or revocation of license; penalty for violation

A. The Board is authorized to promulgate regulations necessary for the proper government and regulation of pilots and to prescribe penalties for the violation of regulations in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Regulations may include the right to suspend or revoke the branch of any pilot. Such suspension or revocation may be in addition to any other penalty imposed by law for the violation.

Reasonable notice and an opportunity to be heard in accordance with the Administrative Process Act shall be given before the Board shall take any action to revoke or suspend the license of any licensee.

B. The Board may suspend a license of any person without a hearing, simultaneously with the institution of proceedings for a hearing, if it finds that there is substantial danger to the public health or safety which warrants such action. The Board may meet by telephone conference call when summarily suspending a license, if a good faith effort to assemble a quorum of the Board has failed and in the judgment of a majority of the members of the Board, the continued practice of the licensee constitutes a substantial danger to the public health or safety. Institution of proceeding 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.

C. Before any penalty for violation of the regulations may be imposed, a printed copy of the regulations shall be furnished to each pilot.

Code 1950, § 54-529; 1988, c. 765; 1989, c. 584 .

§ 54.1-903. Decisions of controversies between pilots and masters, etc.; judgment of Board
The Board may decide any controversy between pilots or between a pilot and the master, owner, or consignee of any vessel, which may arise under any law concerning pilots in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). If the decision requires the payment of money, the Board shall enter a judgment therefor on the record of its proceedings. When an authorized officer receives a copy of the judgment, he shall enforce the payment as if it were an execution against the property of the debtor.

Code 1950, §§ 54-533, 54-534; 1988, c. 765.

§ 54.1-904. Limitation of powers of Board
Nothing in this chapter shall authorize the Board to decide upon the liability of a pilot or his apprentice to any person injured by his negligence or misconduct, or to prevent such person from recovering for any damage occasioned thereby.

Code 1950, § 54-535; 1988, c. 765.

Article 2 - EXAMINATION AND LICENSURE

§ 54.1-905. Examination of pilots; issuance of license; bonds and oath of office
Applicants for examination shall submit to the Board a certificate from the circuit court in the county or city of their residence stating that the applicant is of good character and a resident of

the Commonwealth. The applicant shall also submit proof that he has served as an apprentice for five years, including three years as a limited branch pilot. If the Board finds the applicant qualified to act as a branch pilot it shall issue him a license, and he shall thereupon become a state officer, to be known as a branch pilot and shall hold office as such for one year next ensuing. Before he may perform any of the duties of his office he shall give bond before the clerk of the circuit court of the county or city in which he resides in the penalty of $500, conditioned for the faithful performance of his duties and he shall take the oath of office required by § 49-1.

Branch pilots may conduct and pilot any vessel.

Code 1950, §§ 54-536, 54-555; 1988, c. 765.

§ 54.1-906. Expiration and renewal of licenses

All licenses issued by the Board shall expire on December 31 of the year in which issued. Every pilot who holds a license as a branch pilot shall appear before the Board every twelve months, and, if the Board deems him qualified, it shall renew his license, which shall continue his term of office for one year following each renewal. Upon each renewal he shall appear before the clerk before whom he originally qualified, and renew his oath of office, but the bond given by him shall remain in force.

Code 1950, §§ 54-537, 54-538; 1988, c. 765.

§ 54.1-907. Fee for original license and license renewal

Upon the application for license as a branch pilot and each renewal thereof, the applicant for license or license renewal shall pay a fee established by the Board pursuant to § 54.1-113.

Code 1950, §§ 54-539, 54-540; 1988, c. 765; 1990, c. 72 .

§ 54.1-908. State and local licenses prohibited

No state, city, town or county licenses shall be assessed against any branch pilot.

Code 1950, § 54-541; 1988, c. 765.

§ 54.1-909. License as limited branch pilot

Any apprentice may apply to the Board for a license as a limited branch pilot. The Board may grant him a license after proper examination if in the opinion of the Board the applicant is qualified. The Board may endorse on the license such limitations as it deems proper, and a limited branch pilot shall perform his duties of piloting and conducting vessels within the limitations imposed by his license.

Code 1950, §§ 54-542, 54-543, 54-556; 1988, c. 765; 2007, cc. 326, 559.

Article 3 - DUTIES AND LIABILITIES OF MASTER, ETC

§ 54.1-910. What vessels to take pilots and where

The master of every vessel, other than vessels exclusively engaged in the coastwise trade and those made exempt by United States statutes, inward bound from sea to any port in Virginia or any

intermediate or other point in Hampton Roads, the Virginia waters of Chesapeake Bay, or in any navigable river in Virginia which flows into Chesapeake Bay or Hampton Roads, shall take the first Virginia pilot that offers his services. Any such vessel outward bound, or bound from one port or point in Virginia to another port or point, shall take the first Virginia pilot that offers his services at the port, point, or place of departure or sailing. Any master refusing to do so shall immediately pay to such pilot full pilotage from the point where the services are offered to the point of destination of the vessel.

Code 1950, § 54-544; 1988, c. 765.

§ 54.1-911. Notice to pilot officers

The master, agent or consignee of any vessel requiring a pilot shall give at least two hours' notice of the need for a pilot to the pilot officers.

Code 1950, § 54-547; 1988, c. 765.

§ 54.1-912. Employing unlicensed pilots

No master shall employ any person who is not licensed as a pilot to act as a pilot of his vessel.

Code 1950, § 54-548; 1988, c. 765.

§ 54.1-913. Concealing name of vessel

The master of a vessel shall not conceal or obscure or refuse to disclose the name of his vessel when spoken to by a pilot.

Code 1950, § 54-549; 1988, c. 765.

Article 4 - DUTIES, RIGHTS AND POWERS OF PILOTS

§ 54.1-914. Keeping pilot boat

Every pilot, or the company to which he belongs, shall keep one sufficient boat of at least thirty feet keel.

Code 1950, § 54-550; 1988, c. 765.

§ 54.1-915. Pilot first meeting vessel at sea to have preference

The first pilot who meets a vessel coming in, which his branch entitles him to conduct, shall have the right to take charge of and conduct her into port.

Code 1950, § 54-554; 1988, c. 765.

§ 54.1-916. Discretion of pilot piloting vessel

Any pilot piloting a vessel shall have full discretion as to when the vessel shall be piloted to or from sea, or to or from any port or place within the Commonwealth or situated within any of the waters referred to in § 54.1-910. The pilot's discretion shall be exercised in a reasonable way, with a view to the vessel's safety as well as with a view to the safety of the Commonwealth's waters and ports.

Code 1950, § 54-558; 1988, c. 765.

§ 54.1-917. Enforcement of suspension

If any individual whose pilot's license has been suspended is found on board any vessel as a pilot, or offers to conduct any vessel, he may be dismissed from the vessel by any licensed pilot, to whom all the pilotage shall be paid. The Board may proceed against the individual under the provisions of § 54.1-924 as if the individual had never been licensed. An individual whose pilot's license has been suspended may also be proceeded against under § 54.1-111.

Code 1950, § 54-561; 1988, c. 765.

Article 5 - FEES AND CHARGES

§ 54.1-918. State Corporation Commission to prescribe and enforce rates of pilotage and other charges

The State Corporation Commission shall prescribe and enforce the rates of pilotage and other charges to be observed in the business of pilotage, but before the Commission fixes or prescribes rates or charges it shall give ten days' notice of the time and place of a hearing by publication in a newspaper of general circulation in each of the Cities of Norfolk, Portsmouth and Newport News. For the purpose of determining the fair basis of such rates and charges, the Commission shall, for the two years next preceding, have access to the books and records of the individual pilots who have no organized association, and of any association of pilots who have an organized association whose rates are to be fixed by the Commission, and shall have the same powers given by law in fixing rates and charges of transportation companies.

The Commission shall fix amounts that will be a fair charge for the service rendered. The Commission shall have due regard for necessary operating expenses, maintenance of, depreciation on, and return on investment in properties used and useful in the business of pilotage, and the rates and charges of pilotage at comparable and competing ports of the United States.

When such rates and charges have been fixed and prescribed by the Commission, they shall be the legal rates and charges of pilotage in Virginia, and shall be enforced as provided by law, and the Commission shall have the power to change or alter rates or charges after notice and hearing as provided in this section.

Code 1950, § 54-562; 1988, c. 765; 1992, c. 10 .

§ 54.1-919. Appeal from action of Commission

From any action of the State Corporation Commission under § 54.1-918, an appeal may be taken by the individual pilots, company or association affected, or by any other person, firm or corporation aggrieved by such action, in the manner prescribed in Article IX, Section 4 of the Constitution of Virginia.

Code 1950, § 54-563; 1971, Ex. Sess., c. 37; 1988, c. 765.

§ 54.1-920. Detention on seagoing vessel

If a pilot is detained on board any seagoing vessel he shall be paid by the master, owner, or consignee of the vessel the rate prescribed by the State Corporation Commission for a day's detention for each day detained. If any pilot is carried beyond the limits of the Commonwealth against his will, he shall be entitled to recover $300 from the master or owner of the vessel upon which he has been carried away.

Code 1950, § 54-564; 1988, c. 765.

§ 54.1-921. Quarantine detention

If any pilot is permitted to go on board a vessel without being informed of a contagious or infectious disease on board, and is obligated to remain on board, or perform quarantine in consequence thereof he shall be paid for each day's detention in accordance with the rate prescribed for a day's detention by the State Corporation Commission.

Code 1950, § 54-565; 1988, c. 765.

§ 54.1-922. Liability for pilotage and other allowances

The master and the owner of every vessel shall each be liable to the pilot for his pilotage and other allowances, and also the consignee or supercargo of any vessel not owned by a resident of the Commonwealth. If the consignee or supercargo refuses to become responsible to the pilot for his fees, the master or owner of the vessel shall, before she leaves her port of departure, deposit with some responsible person, subject to the order of the pilot, the amount of the pilotage due him.

Code 1950, § 54-566; 1988, c. 765.

§ 54.1-923. When pilot to produce branch

Every pilot shall, if required, produce his branch at the time of demanding his fees, before he shall be entitled to receive the same.

Code 1950, § 54-569; 1988, c. 765.

Article 6 - OFFENSES AND PENALTIES GENERALLY

§ 54.1-924. Piloting, etc., vessel without license; how offenders proceeded against

No person shall conduct or pilot a vessel to or from sea, or to or from any port or place in Virginia unless he is licensed under this chapter.

Warrants for persons violating this section may be issued by any magistrate, upon the oath of any party complaining, and shall be returnable to the Circuit Court of the City of Norfolk. After a bond hearing held pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, the bond shall be returned by the judicial officer to the circuit court of the City of Norfolk, which shall have jurisdiction for trial of such misdemeanor.

Code 1950, § 54-571; 1988, c. 765.

§ 54.1-925. Exception as to vessels in distress

Section 54.1-924 shall not prevent any person from assisting a vessel in distress.

Code 1950, § 54-572; 1988, c. 765.

§ 54.1-926. Pilot receiving unlawful fees
No pilot shall demand or receive other than the lawful fee for any service. Any pilot who violates this section may be suspended by the Board for up to six months.

Code 1950, § 54-573; 1988, c. 765.

§ 54.1-927. Violation of chapter a misdemeanor
Any person who violates any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor.

1988, c. 765.

Chapter 10 - COMMERCIAL DRIVER TRAINING SCHOOLS [Repealed]

§§ 54.1-1000 through 54.1-1003. Repealed
Repealed by Acts 1990, c. 466 .

Chapter 11 - CONTRACTORS

Article 1 - REGULATION OF CONTRACTORS

§ 54.1-1100. Definitions
As used in this chapter, unless the context requires a different meaning:

"Board" means the Board for Contractors.

"Class A contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is $120,000 or more, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is $750,000 or more.

"Class B contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is $10,000 or more, but less than $120,000, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any 12-month period is $150,000 or more, but less than $750,000.

"Class C contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over $1,000 but less than $10,000, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is less than $150,000. The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors.

"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property. For purposes of this chapter, "improvement" shall include (i) remediation, cleanup, or containment of premises to remove contaminants or (ii) site work necessary to make certain real property usable for human occupancy according to the guidelines established pursuant to § 32.1-11.7.

"Department" means the Department of Professional and Occupational Regulation.

"Designated employee" means the contractor's full-time employee, or a member of the contractor's responsible management, who is at least 18 years of age and who has successfully completed the oral or written examination required by the Board on behalf of the contractor.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Owner-developer" means any person who, for a third party purchaser, orders or supervises the construction, removal, repair, or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by the owner-developer, or any other improvement to such property and who contracts with a person licensed in accordance with this chapter for the work undertaken.

"Person" means any individual, firm, corporation, association, partnership, joint venture, or other legal entity.

"Value" means fair market value. When improvements are performed or supervised by a contractor, the contract price shall be prima facie evidence of value.

Code 1950, § 54-113; 1954, c. 428; 1970, c. 319; 1972, c. 771; 1977, c. 640; 1978, c. 521; 1980, c. 634; 1984, c. 434; 1987, c. 358; 1988, c. 765; 1990, c. 911; 1992, cc. 330, 713, 715, 812; 1993, cc. 499, 815; 1994, cc. 601, 754; 1995, c. 581; 1997, c. 885; 1998, c. 754; 2005, c. 348; 2010, c. 62; 2016, c. 527.

§ 54.1-1101. Exemptions; failure to obtain certificate of occupancy; penalties

A. The provisions of this chapter shall not apply to:

1. Any governmental agency performing work with its own forces;

2. Work bid upon or undertaken for the armed services of the United States under the Armed Services Procurement Act;

3. Work bid upon or undertaken for the United States government on land under the exclusive jurisdiction of the federal government either by statute or deed of cession;

4. Work bid upon or undertaken for the Department of Transportation on the construction, reconstruction, repair or improvement of any highway or bridge;

5. Any other persons who may be specifically excluded by other laws but only to such an extent as such laws provide;

6. Any material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

7. Any person who performs or supervises the construction, removal, repair or improvement of no more than one primary residence owned by him and for his own use during any 24-month period;

8. Any person who performs or supervises the construction, removal, repair or improvement of a house upon his own real property as a bona fide gift to a member of his immediate family provided such member lives in the house. For purposes of this section, "immediate family" includes one's mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law and father-in-law;

9. Any person who performs or supervises the repair or improvement of industrial or manufacturing facilities, or a commercial or retail building, for his own use;

10. Any person who performs or supervises the repair or improvement of residential dwelling units owned by him that are subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.);

11. Any owner-developer, provided that any third party purchaser is made a third party beneficiary to the contract between the owner-developer and a licensed contractor whereby the contractor's obligation to perform the contract extends to both the owner-developer and the third party;

12. Work undertaken by students as part of a career and technical education project as defined in § 22.1-228 established by any school board in accordance with Article 5 (§ 22.1-228 et seq.) of Chapter 13 of Title 22.1 for the construction of portable classrooms or single family homes; and

13. Any person who performs the removal of building detritus or provides janitorial, cleaning, or sanitizing services incidental to the construction, removal, repair, or improvement of real property.

All other contractors performing work for any government or for any governmental agency are subject to the provisions of this chapter and are required to be licensed as provided herein.

B. Any person who is exempt from the provisions of this chapter as a result of subdivision 7, 10, 11, or 12 of subsection A shall obtain a certificate of occupancy for any building constructed, repaired or improved by him prior to conveying such property to a third party purchaser, unless such purchaser has acknowledged in writing that no certificate of occupancy has been issued and that such purchaser consents to acquire the property without a certificate of occupancy.

C. Any person who is exempt from the provisions of this chapter as a result of subdivision 7, 8, 9, 10, 11, or 12 of subsection A shall comply with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

D. Any person who violates the provisions of subsections B or C shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction of violating subsections B or C during a 36-month period shall constitute a Class 6 felony.

Code 1950, § 54-141; 1970, c. 319; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1998, c. 754; 2003, c. 1025; 2004, c. 189; 2005, c. 348; 2007, c. 332; 2016, c. 527.

§ 54.1-1102. Board for Contractors membership; offices; meetings; seal; record

A. The Board for Contractors shall be composed of 15 members as follows: one member shall be a licensed Class A general contractor; the larger part of the business of one member shall be the construction of utilities; the larger part of the business of one member shall be the construction of commercial and industrial buildings; the larger part of the business of one member shall be the construction of single-family residences; the larger part of the business of one member shall be the construction of home improvements; one member shall be a subcontractor as generally regarded in the construction industry; one member shall be in the business of sales of construction materials and supplies; one member shall be a local building official; one member shall be a licensed plumbing contractor; one member shall be a licensed electrical contractor; one member shall be a licensed heating, ventilation and air conditioning contractor; one member shall be a certified elevator mechanic or a licensed elevator contractor; one member shall be a certified water well systems provider, and two members shall be citizen members. The terms of the Board members shall be four years.

The Board shall meet at least once each year and at such other times as may be deemed necessary. Annually, the Board shall elect from its membership a chairman and a vice-chairman to serve for a one-year term. Eight members of the Board shall constitute a quorum.

The Board shall promulgate regulations not inconsistent with statute necessary for the licensure of contractors and tradesmen and the certification of backflow prevention device workers, and for the relicensure of contractors and tradesmen and for the recertification of backflow prevention device workers, after license or certificate suspension or revocation. The Board shall include in its regulations a requirement that as a condition for initial licensure as a contractor, the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course, which shall not exceed eight hours of classroom instruction.

The Board may adopt regulations requiring all Class A, B, and C residential contractors, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to use legible written contracts including the following terms and conditions:

1. General description of the work to be performed;

2. Fixed price or an estimate of the total cost of the work, the amounts and schedule of progress payments, a listing of specific materials requested by the consumer and the amount of down payment;

3. Estimates of time of commencement and completion of the work; and

4. Contractor's name, address, office telephone number and license or certification number and class.

In transactions involving door-to-door solicitations, the Board may require that a statement of protections be provided by the contractor to the homeowner, consumer or buyer, as the case may be.

The Board shall adopt a seal with the words "Board for Contractors, Commonwealth of Virginia." The Director shall have charge, care and custody of the seal.

B. The Director shall maintain a record of the proceedings of the Board.

Code 1950, §§ 54-114, 54-115, 54-119, 54-120, 54-121, 54-123, 54-124; 1954, c. 415; 1970, c. 319; 1977, c. 640; 1979, c. 408; 1980, c. 634; 1981, c. 447; 1988, cc. 42, 765; 1991, c. 659; 1994, c. 895; 1995, c. 771; 1996, cc. 380, 934, 1006; 1997, c. 885; 2006, cc. 454, 475; 2009, cc. 184, 586; 2010, c. 83; 2012, c. 522.

§ 54.1-1103. Necessity for license; requirements for water well drillers and landscape irrigation contractors; exemption

A. No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed under the provisions of this chapter. The Board may waive any provision of this chapter for Habitat for Humanity, its local affiliates or subsidiaries, and any other nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) for the purpose of constructing or rehabilitating single-family dwellings that will be given to or sold below the appraised value to low-income persons. Prior to a joint venture engaging in, or offering to engage in, contracting work in the Commonwealth, (i) each contracting party of the joint venture shall be licensed under the provisions of this chapter or (ii) a license shall be obtained in the name of the joint venture under the provisions of this chapter.

B. Except as provided in § 54.1-1117, the issuance of a license under the provisions of this chapter shall not entitle the holder to engage in any activity for which a special license is required by law.

C. When the contracting work is for the purpose of landscape irrigation or the construction of a water well as defined in § 32.1-176.3, the contractor shall be licensed, regardless of the contract amount, as follows:

1. A Class C license is required when the total value referred to in a single contract or project is no more than $10,000, or the total value of all such water well or landscape irrigation contracts undertaken within any 12-month period is no more than $150,000;

2. A Class B license is required when the total value referred to in a single contract is $10,000 or more, but less than $120,000, or the total value of all such water well or landscape irrigation contracts undertaken within any 12-month period is $150,000 or more, but less than $750,000; and

3. A Class A license is required when the total value referred to in a single contract or project is $120,000 or more, or when the total value of all such water well or landscape irrigation contracts undertaken within any 12-month period is $750,000 or more.

D. Notwithstanding the other provisions of this section, an architect or professional engineer who is licensed pursuant to Chapter 4 (§ 54.1-400 et seq.) shall not be required to be licensed or certified to engage in, or offer to engage in, contracting work or operate as an owner-developer in the Commonwealth in accordance with this chapter when bidding upon or negotiating design-build contracts or performing services other than construction services under a design-build contract. However, the construction services offered or rendered in connection with such contracts shall only be rendered by a contractor licensed or certified in accordance with this chapter.

E. Notwithstanding the other provisions of this section, any person licensed under the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 as a private security services business shall not be required to be licensed or certified to engage in, or offer to engage in, contracting work in the Commonwealth in accordance with this chapter when bidding upon or performing services to install, service, maintain, design or consult in the design of any electronic security equipment as defined in § 9.1-138 including but not limited to, low voltage cabling, network cabling and computer or systems integration.

F. Notwithstanding any other provisions of this section, persons bidding upon or performing services to design or undertake public works of art commissioned by the Commonwealth; a political subdivision of the Commonwealth, including any county, city, or town; or a nonprofit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code shall not be required to be licensed or certified in accordance with this chapter. However, the installation of the artwork and related construction services offered or rendered in connection with such commission shall only be rendered by a contractor licensed or certified in accordance with this chapter.

Code 1950, § 54-128; 1972, c. 16; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1992, c. 713; 1994, cc. 601, 754; 1995, cc. 581, 771; 1997, c. 885; 1998, cc. 271, 754; 1999, cc. 959, 977, 991; 2002, c. 653; 2004, c. 190; 2005, c. 348; 2010, c. 62; 2012, c. 308; 2013, c. 298.

§ 54.1-1104. Register of applicants

The Director shall keep a register of all applicants showing their date of application, name, qualifications, place of business, place of residence, and whether such application was approved or refused. The books and register of the Board shall be prima facie evidence of all matters recorded therein.

Code 1950, § 54-125; 1977, c. 640; 1980, c. 634; 1988, c. 765.

§ 54.1-1105. Repealed

Repealed by Acts 1991, c. 151 .

§ 54.1-1106. Application for Class A license; fees; examination; issuance

A. Any person desiring to be licensed as a Class A contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain the name, place of employment, and business address of the proposed designated employee, and information on the knowledge, skills, abilities, and financial position of the applicant. The Board shall determine whether the past performance record of the applicant, including his reputation for paying material bills and carrying out other contractual obligations, satisfies the purposes and intent of this chapter. The Board shall also determine whether the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all other laws affecting those engaged in the practice of contracting as set forth in this chapter. If the Board determines that sufficient questions or ambiguities exist in an individual applicant's presentation of his financial information, the Board may require the applicant to provide a balance sheet reviewed by a certified public accountant licensed in accordance with § 54.1-4409.1. In addition, if the applicant is a sole proprietor, he shall furnish to the Board his name and address. If the applicant is a member of a partnership, he shall furnish to the Board the names and addresses of all of the general partners of the partnership. If the applicant is a member of an association, he shall furnish to the Board the names and addresses of all of the members of the association. If the applicant is a corporation, it shall furnish to the Board the names and addresses of all officers of the corporation. If the applicant is a joint venture, it shall furnish to the Board the names and addresses of (i) each member of the joint venture and (ii) any sole proprietor, general partner of any partnership, member of any association, or officer of any corporation who is a member of the joint venture. The applicant shall thereafter keep the Board advised of any changes in the above information.

B. If the application is satisfactory to the Board, the proposed designated employee shall be required by Board regulations to take an oral or written examination to determine his general knowledge of contracting, including the statutory and regulatory requirements governing contractors in the Commonwealth. If the proposed designated employee successfully completes the examination and the applicant meets or exceeds the other entry criteria established by Board regulations, a Class A contractor license shall be issued to the applicant. The license shall permit the applicant to engage in contracting only so long as the designated employee is in the full-time employment of the contractor or is a member of the contractor's responsible management. No examination shall be required where the licensed Class A contractor changes his form of business entity provided he is in good standing with the Board. In the event the designated employee leaves the full-time employ of the licensed contractor or is no longer a member of the contractor's responsible management, no additional examination shall be required of such designated employee, except in accordance with § 54.1-1110.1, and the contractor shall within 90 days of that departure provide to the Board the name of the new designated employee.

C. The Board may grant a Class A license in any of the following classifications: (i) residential building contractor, (ii) commercial building contractor, (iii) highway/heavy contractor, (iv)

electrical contractor, (v) plumbing contractor, (vi) heating, ventilation, and air conditioning contractor, and (vii) specialty contractor.

1980, c. 634, § 54-129.1; 1984, c. 45; 1988, c. 765; 1990, c. 911; 1992, c. 713; 1994, c. 601; 1996, c. 707; 1998, c. 754; 1999, c. 393; 2003, c. 892; 2005, c. 348; 2007, c. 804; 2013, c. 116.

§ 54.1-1106.1. Violations of certain State Board of Health regulations; penalty

The Board for Contractors shall consider violations of regulations of the State Board of Health relating to water wells as violations of this chapter, punishable by a fine of not more than $1,000 or suspension or revocation of license. No contractor shall be subject to the monetary penalties provided by this section if he has been assessed a civil penalty for such violation pursuant to § 32.1-27.

1989, c. 241; 1990, c. 911 .

§ 54.1-1106.2. Additional monetary penalty for certain violations

A. If the Board finds any person licensed under the provisions of this chapter to be in violation of a statute or regulation involving fraudulent or improper or dishonest conduct as defined in § 54.1-1118, which violation occurred while engaged in a transaction initiated arising from a declared state of emergency as defined in § 44-146.16, the Board shall impose a monetary penalty of up to $10,000 for each such violation.

B. The penalty imposed pursuant to this section shall be in addition to that provided in § 54.1-202.

2014, c. 508.

§§ 54.1-1107, 54.1-1107.1. Repealed

Repealed by Acts 1990, c. 911, effective January 1, 1991.

§ 54.1-1108. Application for Class B license; fees; examination; issuance

A. Any person desiring to be licensed as a Class B contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain the name, place of employment, and business address of the proposed designated employee; information on the knowledge, skills, abilities, and financial position of the applicant; and evidence of holding a current local license pursuant to local ordinances adopted pursuant to § 54.1-1117. The Board shall determine whether the past performance record of the applicant, including his reputation for paying material bills and carrying out other contractual obligations, satisfies the purpose and intent of this chapter. The Board shall also determine whether the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all other laws affecting those engaged in the practice of contracting as set forth in this chapter. In addition, if the applicant is a sole proprietor, he shall furnish to the Board his name and address. If the applicant is a member of a partnership, he shall furnish to the Board the names and addresses of all of the general partners of that partnership. If the applicant is a member of an association, he shall

furnish to the Board the names and addresses of all of the members of the association. If the applicant is a corporation, it shall furnish to the Board the name and address of all officers of the corporation. If the applicant is a joint venture, it shall furnish to the Board the names and addresses of (i) each member of the joint venture and (ii) any sole proprietor, general partner of any partnership, member of any association, or officer of any corporation who is a member of the joint venture. The applicant shall thereafter keep the Board advised of any changes in the above information.

B. If the application is satisfactory to the Board, the proposed designated employee shall be required by Board regulations to take an oral or written examination to determine his general knowledge of contracting, including the statutory and regulatory requirements governing contractors in the Commonwealth. If the proposed designated employee successfully completes the examination and the applicant meets or exceeds the other entry criteria established by Board regulations, a Class B contractor license shall be issued to the applicant. The license shall permit the applicant to engage in contracting only so long as the designated employee is in the full-time employment of the contractor and only in the counties, cities, and towns where such person has complied with all local licensing requirements and for the type of work to be performed. No examination shall be required where the licensed Class B contractor changes his form of business entity provided he is in good standing with the Board. In the event the designated employee leaves the full-time employ of the licensed contractor, no additional examination shall be required of such designated employee, except in accordance with § 54.1-1110.1, and the contractor shall within 90 days of that departure provide to the Board the name of the new designated employee.

C. The Board may grant a Class B license in any of the following classifications: (i) residential building contractor, (ii) commercial building contractor, (iii) highway/heavy contractor, (iv) electrical contractor, (v) plumbing contractor, (vi) HVAC contractor, and (vii) specialty contractor.

1980, c. 634, § 54-129.3; 1987, c. 110; 1988, c. 765; 1990, c. 911; 1994, c. 601; 1996, c. 707; 2003, c. 892; 2013, c. 116.

§ 54.1-1108.1. Waiver of examination; designated employee

Any Class A contractor licensed in the Commonwealth of Virginia prior to January 1, 1991, and in business on December 31, 1990, shall provide to the Board in writing the name of one full-time employee or member of the contractor's responsible management who is at least 18 years of age and that employee shall be deemed to have fulfilled the requirement for examination in § 54.1-1106, so long as he remains a full-time employee of the contractor or remains a member of the contractor's responsible management. The designated employee shall not be required to take an examination if the Class A contractor changes his form of business entity and is in good standing with the Board. Upon his leaving the employ of the contractor or his leaving as a member of the contractor's responsible management, the contractor shall name another full-time employee or member of the contractor's responsible management in accordance with § 54.1-1106.

Any Class B contractor registered in the Commonwealth prior to January 1, 1991, and in business on December 31, 1990, shall, within its current period of registration, provide on a form prescribed by the Board satisfactory information on the financial position, and knowledge, skills and abilities of the registered firm; and the name of a full-time employee who is at least 18 years of age and that employee shall be deemed to have fulfilled the requirement for examination in § 54.1-1108, so long as he remains a full-time employee of the contractor. The designated employee shall not be required to take an examination if the Class B contractor changes his form of business entity and is in good standing with the Board. If such employee leaves the employ of the contractor, the contractor shall name another full-time employee in accordance with § 54.1-1108.

1990, c. 911; 1996, c. 707; 2003, c. 892; 2005, c. 348.

§ 54.1-1108.2. Application for Class C license; fees; issuance

A. Any person desiring to be licensed as a Class C contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain information concerning the name, location, nature, and operation of the business, and information demonstrating that the applicant possesses the character and minimum skills to properly engage in the occupation of contracting.

B. The Board may grant a Class C license in any of the following classifications: (i) residential building contractor, (ii) commercial building contractor, (iii) highway/heavy contractor, (iv) electrical contractor, (v) plumbing contractor, (vi) heating, ventilation, and air conditioning contractor, and (vii) specialty contractor.

1995, c. 771; 1997, c. 885; 1998, c. 754; 2003, c. 892; 2013, c. 116.

§ 54.1-1109. Expiration and renewal of license or certificate

A license or certificate issued pursuant to this chapter shall expire as provided in Board regulations. Application for renewal of a license or certificate may be made as provided by Board regulations. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

Code 1950, § 54-131; 1970, c. 319; 1977, c. 640; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1995, c. 771; 1996, c. 1014.

§ 54.1-1110. Grounds for denial or revocation of license or certificate

The Board shall have the power to require remedial education, suspend, revoke, or deny renewal of the license or certificate of any contractor who is found to be in violation of the statutes or regulations governing the practice of licensed or certified contractors in the Commonwealth.

The Board may suspend, revoke, or deny renewal of an existing license or certificate, or refuse to issue a license or certificate, to any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board. A substantial identity of interest includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or certificate has

been revoked or nonrenewed, (ii) substantially identical principals or officers, or (iii) the same designated employee as the contractor whose license or certificate has been revoked or not renewed by the Board.

Additionally, the Board may suspend, revoke or deny renewal of an existing license or certificate, or refuse to issue a license or certificate to any contractor who violates the provisions of Chapter 5 (§ 60.2-500 et seq.) of Title 60.2 and Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

Any person whose license is suspended or revoked by the Board shall not be eligible for a license or certificate under any circumstances or under any name, except as provided by regulations of the Board pursuant to § 54.1-1102.

1980, c. 634, § 54-132.1; 1988, c. 765; 1990, c. 911; 1992, c. 243; 1995, c. 771; 1996, c. 380.

§ 54.1-1110.1. Re-examination of designated employee

The Board shall have the power to require remedial education or may require a designated employee to retake the examination required by this chapter, in any case where the conduct of the designated employee, while in the employ of a licensed Class A or Class B contractor, has resulted in any disciplinary action by the Board against such contractor.

1996, c. 707.

§ 54.1-1111. Prerequisites to obtaining business license; building, etc., permit

A. Any person applying to the building inspector or any other authority of a county, city, or town in this Commonwealth, charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, or structure, or any removal, grading or improvement shall furnish prior to the issuance of the permit, either (i) satisfactory proof to such inspector or authority that he is duly licensed or certified under the terms of this chapter to carry out or superintend the same, or (ii) file a written statement, supported by an affidavit, that he is not subject to licensure or certification as a contractor or subcontractor pursuant to this chapter. The applicant shall also furnish satisfactory proof that the taxes or license fees required by any county, city, or town have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.

It shall be unlawful for the building inspector or other authority to issue or allow the issuance of such permits unless the applicant has furnished his license or certificate number issued pursuant to this chapter or evidence of being exempt from the provisions of this chapter.

The building inspector, or other such authority, violating the terms of this section shall be guilty of a Class 3 misdemeanor.

B. Any contractor applying for or renewing a business license in any locality in accordance with Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 shall furnish prior to the issuance or renewal of such license either (i) satisfactory proof that he is duly licensed or certified under the terms of this

chapter or (ii) a written statement, supported by an affidavit, that he is not subject to licensure or certification as a contractor or subcontractor pursuant to this chapter.

No locality shall issue or renew or allow the issuance or renewal of such license unless the contractor has furnished his license or certificate number issued pursuant to this chapter or evidence of being exempt from the provisions of this chapter.

Code 1950, § 54-138; 1970, c. 319; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1991, c. 151; 1992, c. 713; 1995, c. 771; 1998, c. 754; 2010, cc. 82, 755.

§ 54.1-1112. Invitations to bid and specifications to refer to law

All architects and engineers preparing plans and specifications for work to be contracted in Virginia shall include in their invitations to the bidder and in their specifications a reference to this chapter so as to convey to the invited bidder prior to the consideration of the bid (i) whether such person is a resident or nonresident of the Commonwealth, (ii) whether the proper license or certificate has been issued to the bidder, and (iii) the information required of the bidder to show evidence of proper licensure or certification under the provisions of this chapter.

Code 1950, § 54-139; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1995, c. 771.

§ 54.1-1113. Nonresident bidders to appoint statutory agent for service of process

Before any nonresident person or any foreign corporation bids on any work in this Commonwealth, the nonresident person or foreign corporation, by written power of attorney, shall appoint the Director as his agent upon whom all lawful process against or notice to such nonresident person or foreign corporation may be served, and authorize the Director to enter an appearance on his behalf. Upon the filing of the power of attorney the provisions of §§ 13.1-763 through 13.1-766, with reference to service of process and notice, and judgments, decrees and orders, shall be applicable as to such nonresident person or foreign corporation.

Code 1950, § 54-140; 1970, c. 319; 1980, c. 634; 1988, c. 765.

§ 54.1-1114. Filing and hearing of charges

Any person may file complaints against any contractor licensed or certified pursuant to this chapter. The Director shall investigate complaints and the Board may take appropriate disciplinary action if warranted. Disciplinary proceedings shall be conducted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Board shall immediately notify the Director and the clerk and building official of each city, county or town in the Commonwealth of its findings in the case of the revocation of a license or certificate, or of the reissuance of a revoked license or certificate.

Code 1950, § 54-133; 1970, c. 319; 1975, c. 421; 1977, c. 640; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1995, c. 771.

§ 54.1-1115. Prohibited acts

A. The following acts are prohibited and shall constitute the commission of a Class 1 misdemeanor:

1. Contracting for, or bidding upon the construction, removal, repair or improvements to or upon real property owned, controlled or leased by another person without a license or certificate, or without the proper class of license as defined in § 54.1-1100 for the value of work to be performed.

2. Attempting to practice contracting in the Commonwealth, except as provided for in this chapter.

3. Presenting or attempting to use the license or certificate of another.

4. Giving false or forged evidence of any kind to the Board or any member thereof in an application for the issuance or renewal of a license or certificate.

5. Impersonating another or using an expired or revoked license or certificate.

6. Receiving or considering as the awarding authority a bid from anyone whom the awarding authority knows is not properly licensed or certified under this chapter. The awarding authority shall require a bidder to submit his license or certificate number prior to considering a bid.

B. Any person who undertakes work without (i) any valid Virginia contractor's license or certificate when a license or certificate is required by this chapter or (ii) the proper class of license as defined in § 54.1-1100 for the work undertaken, shall be fined an amount not to exceed $500 per day for each day that such person is in violation, in addition to the authorized penalties for the commission of a Class 1 misdemeanor. Any violation of clause (i) of this subsection shall also constitute a prohibited practice in accordance with § 59.1-200 provided the violation involves a consumer transaction as defined in the Virginia Consumer Protection Act (§ 59.1-196 et seq.), and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act.

C. No person shall be entitled to assert the lack of licensure or certification as required by this chapter as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge that a license or certificate was required by this chapter to perform the work for which he seeks to recover payment.

Failure to renew a license or certificate issued in accordance with this chapter shall create a rebuttable presumption of actual knowledge of such licensing or certification requirements.

Code 1950, § 54-142; 1956, c. 397; 1970, c. 319; 1980, c. 634; 1985, c. 356; 1988, c. 765; 1990, c. 911; 1994, c. 79; 1995, c. 771; 1998, c. 691; 2000, c. 33; 2003, cc. 429, 430; 2004, c. 131; 2008, c. 294.

§ 54.1-1115.1. Evidence of violation of the Virginia Uniform Statewide Building Code

In any proceeding pursuant to § 54.1-1114, the Board shall consider any written documentation of a violation of the Uniform Statewide Building Code (§ 36-97 et seq.) provided by a local building official as evidence of a violation of such building code. Such written documentation shall not be prima facie evidence of a building code violation.

1993, c. 942 .

§ 54.1-1116. Repealed

Repealed by Acts 1993, c. 717 .

§ 54.1-1117. Licensing of certain contractors by localities; qualifications and procedure; registration of certain persons engaged in business of home improvement; civil penalty

A. Except as to contractors currently licensed under the provisions of § 54.1-1106, any locality shall have the power and authority to adopt ordinances, not inconsistent with the provisions of this chapter, requiring every person who engages in, or offers to engage in, the business of home improvement or the business of constructing single-family or multi-family dwellings, in such locality, to obtain a license from such locality.

B. The locality adopting ordinances pursuant to this section may require every applicant for such license, other than those currently licensed under the provisions of § 54.1-1106, (i) to furnish evidence of his ability and proficiency; and (ii) to successfully complete an examination to determine his qualifications. The locality may designate or establish an agent or board and establish the procedures for an examination according to the standards set forth in this chapter and in the regulations of the Board for Contractors. Except contractors currently licensed under the provisions of § 54.1-1106, licensure may be refused to any person found not to be qualified. Persons not currently licensed pursuant to § 54.1-1106 may be required to furnish bond in a reasonable penal sum, with reasonable condition, and with surety as the governing body deems necessary. The governing body may provide for the punishment of violations of such ordinances, provided that no such punishment shall exceed that provided for misdemeanors generally.

C. A locality may by ordinance establish a civil penalty that may be assessed when a person or business falsely represents to a customer or prospective customer that such person or business has a valid contractor's license issued pursuant to the provisions of § 54.1-1106. Such civil penalty shall not exceed $2,500.

D. For the purpose of this section the business of home improvement shall mean the contracting for and/or providing labor and material or labor only for repairs, improvements, and additions to residential buildings or structures accessory thereto where any payment of money or other thing of value is required.

1958, c. 522, § 54-145.2; 1964, c. 479; 1970, c. 319; 1972, c. 438; 1977, c. 476; 1979, c. 439; 1980, c. 634; 1988, c. 765; 1994, c. 895; 2012, c. 552.

Article 2 - VIRGINIA CONTRACTOR TRANSACTION RECOVERY ACT

§ 54.1-1118. Definitions

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

"Act" means the Virginia Contractor Transaction Recovery Act.

"Biennium" means a two-year period beginning on July 1 of an even-numbered year and continuing through June 30 of the next even-numbered year.

"Claimant" means any person with an unsatisfied judgment involving residential construction against a regulant, who has filed a verified claim under this Act.

"Fund" means the Virginia Contractor Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful taking or conversion of money, property or other things of value which involves fraud, material misrepresentation or conduct constituting gross negligence, continued incompetence, or intentional violation of the Uniform Statewide Building Code (§ 36-97 et seq.). The term "improper or dishonest conduct" does not include mere breach of contract.

"Judgment" includes an order of a United States Bankruptcy Court (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy," (ii) extinguishing a claim against a regulant who is in bankruptcy and for which claim no distribution was made from the regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court, or (iii) extinguishing a claim against a regulant who is in bankruptcy and for which claim only partial distribution was made from the regulant's bankruptcy estate. An order of dismissal shall not be considered a judgment.

"Regulant" means any individual, person, firm, corporation, association, partnership, joint venture or any other legal entity licensed by the Board for Contractors. "Regulant" shall not include contractors holding only the commercial building contractor classification or individuals licensed or certified in accordance with Article 3 (§ 54.1-1128 et seq.) or Article 4 (§ 54.1-1140 et seq.).

"Verified claim" means a completed application, on a form designed by the Board, the truthfulness of which has been attested to by the claimant before a notary public, along with all required supporting documentation, that has been properly received by the Department in accordance with this chapter.

1980, c. 635, § 54-145.3:1; 1984, c. 270; 1987, c. 555; 1988, cc. 393, 765; 1990, cc. 437, 911; 1994, c. 895; 1995, cc. 771, 784; 1996, cc. 934, 1006; 1997, c. 885; 1999, c. 55; 2013, c. 343; 2015, c. 409.

§ 54.1-1119. Assessments by Director; assignment to Fund; minimum balance; notice; penalties; costs of administration

A. Each initial regulant, at the time of application, shall be assessed twenty-five dollars, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment and transferred to the Fund by the Director within thirty days.

All assessments, except initial assessments, for the Fund shall be deposited within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 64.2-1502.

B. The minimum balance of the Fund shall be $400,000. Whenever the Director determines that the balance of the Fund is or will be less than this minimum balance, the Director shall immediately inform the Board, which shall assess each regulant at the time of his license renewal a sum sufficient to bring the balance of the Fund to an amount of not less than $400,000, when combined with similar assessments of other regulants. No regulant shall be assessed a total amount of more than fifty dollars during any biennium.

Notice to regulants of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within forty-five days after the mailing of the notice to regulants.

C. If any regulant fails to remit the required assessment mailed in accordance with subsection B within forty-five days of such mailing, the Director shall notify such regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within thirty days after mailing the second notice, the license of the regulant shall be automatically suspended and shall be restored only upon the actual receipt by the Director of the delinquent assessment.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest may be used for the purposes of providing educational programs about the Uniform Statewide Building Code (§ 36-97 et seq.), for providing education on subjects of benefit to licensees or members of the public relating to contracting, or shall accrue to the Fund.

1980, c. 635, § 54-145.3:2; 1984, c. 270; 1987, c. 555; 1988, c. 765; 1990, cc. 3, 437, 911; 1992, c. 810; 1995, c. 771; 1996, c. 96; 1997, c. 885.

§ 54.1-1120. Recovery from Fund generally

A. The claimant shall be (i) an individual whose contract with the regulant involved contracting for the claimant's residence located in the Commonwealth or (ii) a property owners' association as defined in § 55-509 whose contract with the regulant involved contracting for improvements to the common areas owned by the association.

The claimant shall not himself be (a) an employee of such judgment debtor, (b) a vendor of such judgment debtor, (c) another licensee, (d) the spouse or child of such judgment debtor or the employee of such spouse or child, or (e) a financial or lending institution or any person whose business involves the construction or development of real property.

B. Whenever any person is awarded a judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct occurring (i) during a period when such individual or entity was a regulant and (ii) in connection with a transaction involving contracting, the claimant may file a verified claim with the Director to obtain a directive ordering payment from the Fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the complaint upon the Board by certified mail or the equivalent.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. A verified claim shall be filed with the Director no later than 12 months after the date of entry of the final judgment from which no further right of appeal exists.

4. Prior to submitting the verified claim, the claimant shall:

a. Conduct or make a reasonable attempt to conduct debtor's interrogatories to determine whether the judgment debtor has any assets that may be sold or applied in whole or partial satisfaction of the judgment; and

b. Take all legally available actions for the sale or application of any assets disclosed in the debtor's interrogatories.

C. If the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, or the distribution ordered fails to satisfy the claim, the claimant may then file a claim with the Board. The verified claim shall be received by the Board within 12 months of the date of bankruptcy discharge or dismissal. In the event the judgment is silent as to the conduct of the regulant, the Board shall determine (i) whether the conduct of the regulant that gave rise to the claim was improper or dishonest and (ii) what amount, if any, such claimant is entitled to recover from the Fund.

1980, c. 635, § 54-145.3:3; 1984, c. 270; 1987, c. 555; 1988, cc. 393, 765; 1990, cc. 215, 437, 911; 1995, c. 784; 1996, c. 96; 1997, c. 885; 1999, cc. 55, 261; 2013, c. 343; 2015, c. 409.

§ 54.1-1121. Investigations

Upon receipt of the notice of proceedings against the regulant, the Department may cause its own investigation to be conducted pursuant to § 54.1-306.

1987, c. 555, § 54-145.3:3.1; 1988, c. 765; 2013, c. 343.

§ 54.1-1122. Consideration of applications for payment

A. The claimant shall submit the following supporting documentation with the claim:

1. Copies of the contract with the regulant and all written change orders to the contract. If no written contract between the regulant and the claimant is available, the claimant may submit an affidavit attesting to the terms of the agreement, promise, or other contractual obligation;

2. All pleadings or other documents filed with the court from which judgment was obtained;

3. All orders and opinions of the court from which judgment was obtained, including the final judgment order;

4. The transcript of the debtor's interrogatories, if conducted, or if no transcript is available, a sworn affidavit affirming that debtor's interrogatories were conducted, or evidence that debtor's interrogatories were attempted if not conducted; a description of assets of the judgment debtor disclosed in the debtor's interrogatories; and a description of all steps taken for the sale or application of those disclosed assets in whole or partial satisfaction of the judgment, or a statement why no means are legally available for the sale or application of those disclosed assets, or a statement that the value of the disclosed assets is less than the cost of levying upon and selling such assets including reasonable estimates of the fair market value of the disclosed assets and costs of levying upon selling such assets;

5. A statement of the balance of the judgment remaining unpaid at the time the claim is submitted to the Department, and a statement that the claimant agrees to notify the Department of any additional payment that may be received in whole or partial satisfaction of the judgment during the pendency of the claim before the Board; and

6. Any other documentary evidence or exhibits the claimant wishes the Board to consider with the claim.

B. The Department shall promptly consider the verified claim of the claimant administratively. If the claim form is incomplete or not properly notarized, or if all required supporting documentation is not included with the claim, then the Department may provide the claimant with notice of any deficiency and an additional opportunity to submit a corrected verified claim. The burden shall be on the claimant to comply with all claim requirements and to submit the necessary documentation within 12 months of the initial claim submission. Once the Department confirms that the verified claim is complete, it shall present such verified claim, along with a recommendation regarding payment, to the Board for the Board's consideration and shall notify the claimant of the Board's recommendation.

C. The Department's and Board's consideration of the claim shall be based solely on the contents of the verified claim. Neither an informal fact-finding conference pursuant to § 2.2-4019 nor a formal hearing pursuant to § 2.2-4020 shall be required, but an informal fact-finding conference may be held at the discretion of the Department if requested by the claimant within 15 days of the claimant's receipt of the Department's recommendation to the Board.

D. A claimant shall not be denied recovery from the Fund due to the fact that order for judgment filed with the verified claim does not contain a specific finding of "improper or dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant meets the definition of "improper or dishonest conduct" in § 54.1-1118 shall be used by the Board to determine eligibility for recovery from the Fund. To the extent the judgment order is silent as to the court's findings on the conduct of the regulant, the Board may determine whether the conduct of the regulant meets the definition of improper or dishonest conduct by substantial evidence in the verified claim.

E. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment from the fund to the claimant the amount remaining unpaid on the judgment, subject to the limitations set forth in § 54.1-1123. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

1980, c. 635, § 54-145.3:4; 1984, c. 270; 1987, c. 555; 1988, c. 765; 2006, c. 723; 2013, c. 343.

§ 54.1-1123. Limitations upon recovery from Fund; certain actions not a bar to recovery

A. The maximum claim of one claimant against the Fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving contracting is limited to $20,000, regardless of the amount of the unpaid judgment of the claimant.

B. The aggregate of claims against the Fund based upon unpaid judgments arising out of the improper or dishonest conduct of any one regulant involving contracting, is limited by the Board to $40,000 during any biennium. If a claim has been made against the Fund, and the Board has reason to believe there may be additional claims against the Fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the Fund involving such regulant for a period of not more than one year from the date on which the claimant is awarded in a court of competent jurisdiction in the Commonwealth the final judgment on which his claim against the Fund is based. After this one-year period, if the aggregate of claims against the regulant exceeds $40,000, during a biennium, $40,000 shall be prorated by the Board among the

claimants and paid from the Fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

C. Excluded from the amount of any unpaid judgment upon which a claim against the Fund is based shall be any sums representing interest, or punitive damages, or any amounts that do not constitute actual monetary loss to the claimants. Such claim against the Fund may include court costs and attorney fees.

D. If, at any time, the amount of the Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this Act, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board.

E. Failure of a claimant to comply with the provisions of subdivisions B 1 and 2 and subsection C of § 54.1-1120 and the provisions of § 54.1-1124 shall not be a bar to recovery under this Act if the claimant is otherwise entitled to such recovery.

F. The Board shall have the authority to deny any claim which otherwise appears to meet the requirements of the Act if it finds by clear and convincing evidence that the claimant has presented false information or engaged in collusion to circumvent any of the requirements of the Act.

1980, c. 635, § 54-145.3:5; 1984, c. 270; 1987, cc. 555, 562; 1988, c. 765; 1990, cc. 437, 911; 1997, c. 885; 1999, c. 262; 2005, c. 252; 2015, cc. 409, 710.

§ 54.1-1124. Participation by Board or Director in proceeding

Upon service of the complaint as provided in subdivision B 1 of § 54.1-1120, the Board, the Director, or duly authorized representatives of the Board shall then have the right to request leave of court to intervene.

1980, c. 635, § 54-145.3:6; 1984, c. 270; 1987, c. 555; 1988, c. 765; 2015, c. 409.

§ 54.1-1125. Assignment of claimant's rights to Board; payment of claim

A. Subject to the provisions of § 54.1-1123 upon the claimant's execution and delivery to the Director of an assignment to the Board of his rights against the regulant, to the extent he received satisfaction from the Fund, the Director shall pay the claimant from the Fund the amount ordered by the Board.

B. The Board may consider any amount owed to the Board for repayment of the Fund by an applicant for a license under this chapter when determining whether to grant such license.

1980, c. 635, § 54-145.3:7; 1987, c. 555; 1988, c. 765; 1997, c. 885; 2013, c. 343.

§ 54.1-1126. Repealed

Repealed by Acts 2013, c. 343, cl. 2.

§ 54.1-1127. No waiver by Board of disciplinary action against regulant

This article shall not limit the authority of the Board to take disciplinary action against any regulant for any violation of this title or the regulations of the Board. Full repayment of the amount

paid from the Fund on a regulant's account shall not nullify or modify the effect of any disciplinary proceeding against that regulant for any violation.

1980, c. 635, § 54-145.3:9; 1988, c. 765; 1997, c. 885.

Article 3 - TRADESMEN, BACKFLOW PREVENTION DEVICE WORKERS, AND LIQUEFIED PETROLEUM GAS FITTERS

§ 54.1-1128. Definitions

"Backflow prevention device worker" means any individual who engages in, or offers to engage in, the maintenance, repair, testing, or periodic inspection of cross connection control devices, including but not limited to reduced pressure principle backflow preventors, double check-valve assemblies, double-detector check-valve assemblies, pressure type vacuum breaker assemblies, and other such devices designed, installed, and maintained in such a manner so as to prevent the contamination of the potable water supply by the introduction of nonpotable liquids, solids, or gases, thus ensuring that the potable water supply remains unaltered and free from impurities, odor, discoloration, bacteria, and other contaminants which would make the potable water supply unfit or unsafe for consumption and use.

"Board" means the Board for Contractors.

"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems which require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.

"Natural gas fitter provider" means any individual who engages in or offers to engage in work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires heating, ventilation and air conditioning or plumbing certification.

"Tradesman" means any individual who engages in, or offers to engage in, work for the general public for compensation in the trades of electrical, plumbing and heating, ventilation and air conditioning.

"Water well systems provider" means any individual who is certified by the Board in accordance with this article and who is engaged in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source heat exchangers, and other equipment associated with the construction, removal, or repair of water wells, water well systems, and ground source heat pump exchangers to the point of connection to the ground source heat pump.

1994, c. 895; 1996, cc. 934, 1006; 1997, c. 403; 1999, c. 343; 2005, c. 792; 2011, cc. 743, 744.

§ 54.1-1129. Necessity for licensure

A. Beginning July 1, 1995, no individual shall engage in, or offer to engage in, work as a tradesman as defined in § 54.1-1128 unless he has been licensed under the provisions of this article. Individuals shall not be subject to licensure as a tradesman when working under the supervision of a tradesman who is licensed in the specialty for which work is being performed. Individuals holding a license in one specialty shall not be required to have a tradesman license in another specialty when performing work which is incidental to work being performed under their own specialty license.

B. Beginning July 1, 1998, no individual shall present himself as a certified backflow prevention device worker as defined in § 54.1-1128 unless he has been certified under the provisions of this article. Individuals certified as backflow prevention device workers shall not be required to hold any other professional or occupational license or certification; however, nothing in this subsection shall prohibit an individual from holding more than one professional or occupational license or certification. The certification program set forth in this article concerning backflow prevention device workers shall be voluntary and shall not be construed to prevent or affect the practice of backflow prevention device workers by those not certified by the Board, so long as any requirements of the applicable local governing body's programs relating to backflow prevention device workers are met. All local governing bodies shall accept certification by the Board of backflow prevention device workers as proof of experience and training without requiring additional examination.

C. Beginning one year after the effective date of the Board's final regulations, no individual shall engage in, or offer to engage in, work as a liquefied petroleum gas fitter or natural gas fitter provider as defined in § 54.1-1128 unless he has been licensed under the provisions of this article.

D. Beginning July 1, 2007, no individual shall engage in the drilling, installation, maintenance, or repair of a water well or water well system unless a certified water well systems provider is onsite at all times. Until June 30, 2012, any level of certification shall satisfy this requirement. Beginning July 1, 2012, only a certified individual shall engage in the drilling, installation, maintenance, or repair of a water well or water well system and a then certified master water well systems provider shall be available at all times. Nothing in this subsection shall be construed to prohibit licensed plumbing tradesman from (i) completing work contained in the applicable plumbing code, or (ii) performing normal maintenance and repair on large-diameter bored or hand-dug water table wells provided such wells are 100 feet or less in depth and the work is being performed for an entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code .

1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343; 2000, c. 406; 2005, c. 792; 2008, c. 631.

§ 54.1-1129.1. Certification of water well systems providers; continuing education

A. The Board shall establish three levels of certification as follows: (i) trainee, which shall require proof of at least one year of full-time practical experience in the drilling, installation,

maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider; (ii) journeyman, which shall require proof of at least three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider; and (iii) master, which shall require proof of at least six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems, under the supervision of a certified master water well systems provider.

B. A certified water well systems provider, as a condition of renewal or reinstatement and as part of the renewal or reinstatement application, shall certify to the Board that the applicant has completed at least eight hours of continuing education, approved by the Board, in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction. The Board may establish requirements for approval of training instructors, criteria for continuing education, and other regulations it deems necessary to protect the public health, safety or welfare. In addition, the Board may require continuing education for renewal or reinstatement for any individual found to be in violation of the statutes or regulations governing the licensing or certification of water well system providers.

2005, c. 792.

§ 54.1-1130. Application for licensure; fees; examinations; issuance; waiver of examination for water well systems providers

A. Any individual desiring to be licensed as a tradesman, liquefied petroleum gas fitter or natural gas fitter provider, or certified as a backflow prevention device worker or water well systems provider shall file a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain, at a minimum, the applicant's name, place of employment, and business address; and information on the knowledge, skills, abilities and education or training of the applicant.

If the application is satisfactory to the Board, the applicant shall be required by Board regulations to take an oral or written examination to determine his general knowledge of the trade in which he desires licensure or of backflow prevention devices if he desires voluntary certification unless he is exempt pursuant to § 54.1-1131. If the applicant successfully completes the examination, a license as a tradesman, liquefied petroleum gas fitter, or natural gas fitter provider, or a certificate as a backflow prevention device worker, shall be issued.

B. The Board shall require an applicant for certification as a water well systems provider, unless otherwise exempt, to take an oral or written examination to determine the applicant's general knowledge of water well systems, including relevant statutory and regulatory requirements. If the applicant successfully completes a required examination, a certificate shall be issued.

Notwithstanding any other provision of this section, unless an applicant is found by the Board to have engaged in any act that would constitute grounds for disciplinary action, the Board shall

issue a certificate without examination to any applicant who provides satisfactory proof to the Board of having been actively and continuously engaged in water well construction activities immediately prior to July 1, 2007, as follows: (i) at least one year for trainee certification; (ii) at least three years for journeyman certification; and (iii) at least six years for master certification. This subsection shall apply only to individuals who have been employed by a properly licensed water well contractor during such period of active and continuous engagement in water well construction activities.

1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343; 2003, c. 892; 2005, c. 792.

§ 54.1-1131. Exemptions

A. An individual certified or licensed by any one of the following agencies shall not be required to fulfill the examination requirement specified in § 54.1-1130 for a tradesman license:

1. The Board of Housing and Community Development prior to July 1, 1995.

2. Any local governing body prior to July 1, 1978.

3. An apprenticeship program which is approved by the Commissioner of Labor and Industry.

Individuals applying for a tradesman license between July 1, 1995, and July 1, 1998, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have the required number of years of discipline-free experience set forth in Board regulations.

B. Upon satisfactory evidence to the Board, the following individuals shall not be required to fulfill the examination requirement specified in § 54.1-1130 to be certified as a backflow prevention device worker or licensed as a liquefied petroleum gas fitter:

1. Individuals approved, or recognized as having expertise, by a local governing body prior to July 1, 1998, to perform backflow prevention device work;

2. Individuals applying for certification as a backflow prevention device worker between July 1, 1998 and July 1, 1999, who are able to demonstrate that they have the required number of years of discipline-free experience and education or training set forth in Board regulations; or

3. Individuals applying for licensure as a liquefied petroleum gas fitter within one year of the effective date of the Board's final regulations, who are able to demonstrate that they have at least five years' experience as a liquefied petroleum gas fitter.

C. The provisions of this article shall not apply to any individual who is performing work on (i) any ship, boat, barge or other floating vessel or (ii) a single-family residence where the value of the work performed is less than $250 and such individual does not hold himself out to the general public as a tradesman.

D. Individuals applying for a natural gas fitter provider license within one year of the effective date of the Board's final regulations, shall be deemed to have fulfilled the examination requirement if

they are able to demonstrate that they have five years' prior experience as a natural gas fitter provider.

E. Individuals applying for a natural gas fitter provider license between July 1, 1999 and July 1, 2004, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter.

F. Individuals applying for licensure as a liquefied petroleum gas fitter between July 1, 2000 and July 1, 2005, shall be deemed to have fulfilled the examination requirements if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter.

1994, c. 895; 1995, c. 581; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, cc. 343, 817, 833; 2000, c. 406; 2014, c. 734.

§ 54.1-1132. Expiration and renewal of license or certificate

A license as a tradesman, liquefied petroleum gas fitter or natural gas fitter provider, or a certificate as a backflow prevention device worker, issued pursuant to this article shall expire as provided in Board regulations and shall become invalid on that date unless renewed, subject to approval of the Board. Application for renewal of any certificate or license issued pursuant to this article shall be made as provided by Board regulations and shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343.

§ 54.1-1133. Continuing education

The Board may establish in the regulations requirements for continuing education as a prerequisite to renewal of any certificate or license issued under this article. The Board shall require evidence of knowledge of code changes as a prerequisite to renewal of any certificate or license issued under this article. In addition, the Board may require continuing education for any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen or certificate holders issued under this article.

1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 817.

§ 54.1-1134. Grounds for denial or revocation of certification or license; reports of building officials and others

The Board shall have the power to require remedial education and to suspend, revoke or deny renewal of the certification or license of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers or certified backflow prevention device workers in the Commonwealth.

Any building official who finds that an individual is practicing as a tradesman, elevator mechanic, liquefied petroleum gas fitter or natural gas fitter provider without a license as required by this

article shall file a report to such effect with the Board. Any water purveyor or building official who finds that an individual is practicing as a backflow prevention device worker without a certificate, if a certificate is required by the locality in which an individual is engaging in backflow prevention device worker activities, shall file a report to such effect with the Board.

Any building official who has reason to believe that (i) a tradesman, liquefied petroleum gas fitter or natural gas fitter provider is performing incompetently as demonstrated by an egregious or repeated violation of the Uniform Statewide Building Code (§ 36-97 et seq.) or (ii) a certified backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board. Any water purveyor who has reason to believe that a certified backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board and local building official.

1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343; 2009, cc. 184, 586.

§ 54.1-1135. Prohibited acts

A. Practicing or attempting to practice as a tradesman, liquefied petroleum gas fitter or natural gas fitter provider in the Commonwealth, except as provided for in this article, is prohibited and shall constitute the commission of a Class 1 misdemeanor.

B. No person shall represent himself as a certified backflow prevention device worker unless he has been certified by the Board. Any person engaging or offering to engage in backflow prevention device worker activities within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified backflow prevention device worker without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.

C. No person shall be entitled to assert the lack of licensure as required by this article as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the licensure requirements of this article.

D. In any locality which requires state certification to engage in backflow prevention device worker activities, no person shall be entitled to assert a lack of certification as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the locality's certification requirements.

1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, cc. 343, 833.

Article 4 - CERTIFICATION OF ELEVATOR MECHANICS

§ 54.1-1140. Definitions

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

"Accessibility mechanic" means an individual who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators, in accordance with the Uniform Statewide Building Code (§ 36-97 et seq.).

"Certified accessibility mechanic" means an individual who is certified by the Board in accordance with this article to engage in work as an accessibility mechanic.

"Elevator mechanic" means an individual who is certified by the Board in accordance with this article to engage in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

"Limited use/limited application endorsement" means an addition to the certification record of a certified accessibility mechanic authorizing the certificate holder to erect, construct, install, alter, service, repair, test, or maintain limited use/limited application elevators as defined by the Uniform Statewide Building Code.

2004, c. 188; 2007, c. 424; 2009, cc. 184, 586; 2010, cc. 81, 207.

§ 54.1-1141. Certification required; exemption

A. No person shall engage in, or offer to engage in, work as an elevator mechanic or accessibility mechanic in the Commonwealth unless he has been certified under the provisions of this article. Individuals certified as elevator mechanics or accessibility mechanics shall not be required to hold any other professional or occupational license or certification; however, nothing in this subsection shall prohibit an individual from holding more than one professional or occupational license or certification.

B. Any individual desiring to be certified as an elevator mechanic or accessibility mechanic shall file a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain, at a minimum, the applicant's name, place of employment, business address, and information on the knowledge, skills, abilities and education or training of the applicant.

C. Accessibility mechanics desiring to work on limited use/limited application elevators, as defined by the Uniform Statewide Building Code, shall obtain a limited use/limited application endorsement on their certification.

D. Nothing in this article shall be construed to prevent a person who is not certified as an elevator mechanic or accessibility mechanic from performing maintenance that is not related to the operating integrity of an elevator, escalator, or related conveyance.

2004, c. 188; 2007, c. 424; 2010, cc. 81, 207.

§ 54.1-1142. Issuance of certification; emergency certification

A. The Board shall issue a certificate to practice as an elevator mechanic or certified accessibility mechanic in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:

1. Completed the educational requirements as required by the Board, which shall at a minimum include such requirements as the Board determines will establish minimum competency on the part of the applicant;

2. Completed the experience requirements as required by the Board, which shall at a minimum consist of at least three years in the elevator industry; and

3. Passed an examination offered or approved by the Board.

B. The Board may issue a certificate to practice as an elevator mechanic or a certified accessibility mechanic to any applicant who has completed a training and education program approved by the Board that is equal to or exceeds the requirements established by the Board for all applicants.

2004, c. 188; 2007, c. 424; 2009, cc. 184, 586; 2010, cc. 81, 207.

§ 54.1-1142.1. Certifications in event of declared emergency

A. Whenever the Governor declares a state of emergency in accordance with § 44-146.17 or in the event of a work stoppage by elevator mechanics and the Board determines that the number of elevator mechanics is insufficient to meet the demands of the emergency or work stoppage, the Board shall issue an emergency certificate to practice as an elevator mechanic under the following conditions:

1. A contractor licensed under the provisions of this chapter (a) attests to the Board, in a form prescribed by the Board, that an applicant has an acceptable combination of documented experience and education to perform work as an elevator mechanic without direct and immediate supervision of an elevator mechanic and (b) provides such proof thereof as required by the Board; and

2. The applicant attested to the Board by the licensed contractor applies to the Board for emergency certification as an elevator mechanic.

As used in this subsection, "direct and immediate supervision" means proper supervision but does not include line of sight supervision.

B. Each such certification shall be valid for a period of 45 days from the date of issuance and for such geographic areas or such elevators, escalators, or related conveyances as the Board may designate. Such certification shall entitle the certificate holder to engage in work as an elevator mechanic. The Board shall renew such certification as often as necessary to ensure that there is a sufficient number of elevator mechanics to meet the demands of the emergency. No fee shall be charged for application for such certification or any renewal thereof.

C. The Board may delegate to the Director of the Department the authority to issue such emergency certifications. The Director shall inform the Board of the issuance of any certifications.

2007, c. 424; 2009, cc. 184, 586.

§ 54.1-1142.2. Certifications in event of shortage of elevator mechanics

A. Whenever a contractor licensed under the provisions of this chapter demonstrates to the satisfaction of the Board that there is a shortage of elevator mechanics, the Board shall issue temporary certifications under the following conditions:

1. The licensed contractor attests to the Board, in a form prescribed by the Board, that after due diligence, the licensed contractor is unable to find an elevator mechanic from the list of elevator mechanics maintained by the Board to perform elevator work;

2. The applicant has an acceptable combination of documented experience and education to perform work as an elevator mechanic without direct and immediate supervision of an elevator mechanic and provides such proof thereof as required by the Board;

3. The applicant applies for such temporary certification as an elevator mechanic; and

4. The applicant pays an application fee as set by the Board.

As used in this subsection, "direct and immediate supervision" means proper supervision but does not include line of sight supervision.

B. Each such temporary certification shall be valid for a period of up to 45 days from the date of issuance, provided the applicant continues at all times to be employed by the licensed contractor. The Board shall renew such certification as often as necessary to ensure that there is a sufficient number of elevator mechanics to meet the shortage.

C. The Board may delegate to the Director of the Department the authority to issue such temporary certifications or renewals thereof. The Director shall inform the Board of the issuance of any such certifications or renewals.

2009, cc. 184, 586.

§ 54.1-1143. Continuing education

A. The Board shall establish in the regulations requirements for continuing education as a prerequisite to renewal of any certificate issued under this article. The Board shall require evidence of knowledge of the Uniform Statewide Building Code changes as a prerequisite to renewal of any certificate issued under this article. In addition, the Board may require continuing education for any individual who is found to be in violation of law or regulations governing the practice of an elevator mechanic certified under this article.

B. An elevator mechanic or a certified accessibility mechanic, as a condition of recertification and as part of the recertification application, shall attest to the Board that he has completed at least eight hours of continuing education, approved by the Board, in the specialty of elevator/escalator

contracting. The Board may establish such requirements for approval of training instructors, the criteria for the continuing education and such other regulations to ensure the protection of the public interest. Such criteria shall include approval of curriculum sponsored by national or state professional elevator industry associations approved by the Board.

C. The provisions of this section shall not apply to certifications issued by the Board under § 54.1-1142.1 or 54.1-1142.2.

2004, c. 188; 2007, c. 424; 2009, cc. 184, 586; 2010, cc. 81, 207.

Article 5 - RESIDENTIAL BUILDING ENERGY ANALYSTS

§ 54.1-1144. Definitions

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

"Accredited residential building energy analyst training program" means a training program that has been approved by the Board to provide training for individuals to engage in blower door, duct blaster, or similar testing to measure energy efficiency, conduct energy modeling, prepare a residential building energy analysis report, and provide recommendations for improvements with return on investment or third-party verification for nationally accredited energy efficiency programs.

"Licensed residential building energy analyst" means an individual who has successfully completed an accredited residential building energy analyst training program or meets the criteria of experience required by this article and regulations of the Board and who has been licensed by the Board.

"Residential building energy analysis" means (i) an inspection, investigation, or survey of a dwelling or other structure to evaluate, measure, or quantify its energy consumption and efficiency, including lighting, HVAC, electronics, appliances, water heaters, insulation, and water conservation, and (ii) recommendations to reduce energy consumption and improve efficiency of a dwelling or other structure, including lighting, HVAC, electronics, appliances, water heaters, insulation, and water conservation for compensation conducted or made by a licensed residential building energy analyst.

2011, c. 865.

§ 54.1-1145. License required

A. No person shall engage in, or offer to engage in, work as a residential building energy analyst in the Commonwealth unless he has been licensed under the provisions of this article.

B. The Board may issue a license to perform residential building energy analysis in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:

1. Completed an accredited residential building energy analyst training program;

2. Completed at least five residential building energy analyses under the supervision of a licensed residential building energy analyst;

3. Remains in good standing with any certifying organization approved by the Board, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the Board for all applicants;

4. Maintains the necessary insurance coverage as determined by the Board; and

5. Demonstrates the financial capability, as determined by the Board, to perform residential building energy analysis.

C. Individuals applying for a license as a residential building energy analyst between July 1, 2011, and July 1, 2012, who submit satisfactory evidence to the Board of having been actively and continuously engaged in residential building energy analysis for the immediately preceding three years shall be licensed by the Board, unless an applicant is found by the Board to have engaged in any act that would constitute grounds for disciplinary action.

2011, c. 865.

§ 54.1-1146. Additional powers of the Board

The Board shall adopt regulations necessary to establish procedures and requirements for the (i) approval of accredited residential building energy analyst training programs, (ii) licensing of individuals and firms to engage in residential building energy analysis, and (iii) establishment of standards for performing residential building energy analysis consistent with the U.S. Environmental Protection Agency guidelines and recognized by the Energy Star Program.

2011, c. 865.

Chapter 12 - COSMETOLOGISTS [Repealed]

§§ 54.1-1200 through 54.1-1207. Repealed

Repealed by Acts 2000, c. 726, cl. 2.

Chapter 13 - EMPLOYMENT AGENCIES [Repealed]

§§ 54.1-1300 through 54.1-1308. Repealed

Repealed by Acts 1996, cc. 61 and 179.

Chapter 14 - GEOLOGISTS [Repealed]

§§ 54.1-1400 through 54.1-1405. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 39.

Chapter 15 - HEARING AID SPECIALISTS AND OPTICIANS

Article 1 - GENERAL PROVISIONS

§ 54.1-1500. Definitions

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

"Board" means the Board for Hearing Aid Specialists and Opticians.

"Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories, including earmolds, but excluding batteries and cords.

"Licensed hearing aid specialist" means any person who is the holder of a hearing aid specialist license issued by the Board for Hearing Aid Specialists and Opticians.

"Licensed optician" means any person who is the holder of an optician license issued by the Board for Hearing Aid Specialists and Opticians.

"Licensed optometrist" means any person authorized by Virginia law to practice optometry.

"Licensed physician" means any person licensed by the Board of Medicine to practice medicine and surgery.

"Optician" means any person not exempted by § 54.1-1506 who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances, to the human face.

"Practice of fitting or dealing in hearing aids" means (i) the measurement of human hearing by means of an audiometer or by any other means solely for the purpose of making selections, adaptations or sale of hearing aids, (ii) the sale of hearing aids, or (iii) the making of impressions for earmolds. A practitioner, at the request of a physician or a member of a related profession, may make audiograms for the professional's use in consultation with the hard-of-hearing.

"Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or practitioners.

"Temporary permit" means a permit issued while an applicant is in training to become a licensed hearing aid specialist.

1970, c. 571, § 54-524.110; 1988, c. 765; 2005, c. 599; 2012, cc. 803, 835.

§ 54.1-1500.1. Board for Hearing Aid Specialists and Opticians; qualifications and terms of members; officers

A. The Board for Hearing Aid Specialists and Opticians shall consist of 15 members, as follows: four licensed hearing aid specialists, of which at least one shall be licensed as an audiologist by the Board of Audiology and Speech-Language Pathology, six licensed opticians, one otolaryngologist, one ophthalmologist, and three citizen members.

B. One of the citizen members shall be a hearing aid user or a person who has a family member who is or has been a hearing aid user. Each hearing aid specialist and the otolaryngologist shall have at least five years of experience in their respective fields immediately prior to appointment. Each of the opticians shall have at least five years of experience prior to appointment and the ophthalmologist shall have practiced ophthalmology for at least five years prior to appointment.

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

D. The Board shall elect a chairman and vice-chairman from its membership.

2012, cc. 803, 835.

§ 54.1-1500.2. Nominations for Board appointments

A. The appointment of the otolaryngologist member may be made from a list of at least three names submitted to the Governor by the Medical Society of Virginia. The appointment of one of the hearing aid specialist members may be made from a list of at least three names submitted to the Governor by the Speech-Language Hearing Association of Virginia. The appointment of the remaining hearing aid specialist members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Society of Hearing Aid Specialists. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Society or Association, respectively, of any vacancy other than by expiration, and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

B. The appointment of the licensed optician members may be made from a list of at least three names for each vacancy submitted to the Governor by the Opticians Association of Virginia for each appointee who is an optician, and by the Medical Society of Virginia for each appointee who is a physician. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Society or Association, respectively, of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

2012, cc. 803, 835.

Article 2 - HEARING AIDS AND HEARING AID SPECIALISTS

§ 54.1-1501. Exemptions; sale of hearing aids by corporations, etc., measuring hearing

A. Physicians licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification shall not be required to pass an examination as a prerequisite to obtaining a license under this chapter.

B. Nothing in this chapter shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling

or offering for sale hearing aids at retail without a license, provided that it employs only licensed practitioners in the direct sale and fitting of such products.

C. Nothing in this chapter shall prohibit any person who does not sell hearing aids or accessories or who is not employed by an organization which sells hearing aids or accessories from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids.

1970, c. 571, §§ 54-524.111, 54-524.112; 1974, c. 534; 1986, c. 279; 1988, c. 765; 1996, c. 741.

§§ 54.1-1502, 54.1-1503. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 35.

§ 54.1-1504. License required

No person shall engage in the practice of fitting or dealing in hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting or dealing of hearing aids unless he holds a license as provided in this chapter.

1970, c. 571, § 54-524.111; 1974, c. 534; 1986, c. 279; 1988, c. 765; 2005, c. 599.

§ 54.1-1505. Return of hearing aid by purchaser or lessee

A. Within thirty days of the date of delivery, any purchaser or lessee of a hearing aid shall be entitled to return the hearing aid for any reason, provided such aid is returned in satisfactory condition. Such purchaser or lessee shall be entitled to a replacement or a refund of all charges paid, less a reasonable charge for medical, audiological, and hearing aid evaluation services provided by the hearing aid specialist.

B. The right of a purchaser or lessee to return a hearing aid and the charges to be imposed upon the return of such hearing aid, as provided in subsection A of this section, shall be explained and given in writing in at least ten-point, bold-faced type to such purchaser or lessee by the hearing aid specialist.

C. The provisions of this section shall be subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

1990, c. 584 .

Article 3 - OPTICIANS

§ 54.1-1506. Exemptions

The provisions of this chapter shall not apply to:

1. Any licensed physician or licensed optometrist;

2. Any individual, partnership, or corporation engaged in supplying ophthalmic prescriptions and supplies exclusively to licensed physicians, licensed optometrists, licensed opticians, or optical scientists;

3. Any person who does not hold himself out to the public as an "optician," and who works exclusively under the direct supervision and control of a licensed physician or licensed optometrist or licensed optician, and in the same location;

4. The sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, or binoculars that are completely preassembled and sold as merchandise; or

5. Any optician who (i) does not regularly practice in Virginia; (ii) holds a current valid license or certificate to practice as an optician in another state, territory, district, or possession of the United States; (iii) volunteers to provide free health care to an underserved area of the Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world; (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board; (v) notifies the Board, within 15 days prior to the voluntary provision of services of the dates and location of such services; and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board.

1954, c. 237, §§ 54-398.1, 54-398.3; 1974, c. 534; 1988, c. 765, § 54.1-1701; 2002, c. 740; 2012, cc. 803, 835.

§ 54.1-1507. Practice of opticians restricted

No person shall practice or offer to practice as an optician in the Commonwealth unless he holds a license issued under this chapter.

1954, c. 237, § 54-398.3; 1974, c. 534; 1988, c. 765, § 54.1-1704; 2012, cc. 803, 835.

§ 54.1-1508. Optical prescriptions, ocular refraction, etc

Nothing in this chapter shall authorize an optician, or anyone else not otherwise authorized by law, to make, issue, or alter optical prescriptions, or to practice ocular refraction, orthoptics, or visual training, or to fit contact lenses except on the prescription of an ophthalmologist or optometrist and under his direction, or to advertise or offer to do so in any manner.

1954, c. 237, § 54-398.27; 1964, c. 101; 1988, c. 765, § 54.1-1705; 2012, cc. 803, 835.

§ 54.1-1509. Permissible practices

Notwithstanding the provisions of subdivisions 7 and 8 of § 54.1-3204, a licensed optician is authorized to prepare and dispense eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists; duplicate and reproduce previously prepared eyeglasses, spectacles, lenses, or related appurtenances; and, in accordance with such prescriptions, duplications, or reproductions, measure, adapt, fit, and adjust eyeglasses, spectacles, lenses, or appurtenances to the human face. A licensed optician shall not, however, duplicate a contact lens solely from a previously prepared contact lens.

1990, c. 718, § 54.1-1706; 1993, c. 206; 2009, cc. 353, 761; 2012, cc. 803, 835.

Chapter 16 - LIBRARIANS [Repealed]

§§ 54.1-1600 through 54.1-1606. Repealed
Repealed by Acts 1988, c. 716.

Chapter 17 - OPTICIANS [Repealed]

§§ 54.1-1700 through 54.1-1706. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 35.

Chapter 18 - POLYGRAPH EXAMINERS

§ 54.1-1800. Definitions
As used in this chapter, unless the context requires a different meaning:

"Course of instruction" means a formal course of instruction in the detection of deception and the verification of truth in an institution approved by the Director.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Other detection device" or "device" means any mechanical or electronic instrument or device, other than a polygraph, used to test or question individuals for the purpose of detecting deception or verifying truthfulness.

"Person" means any natural person, partnership, association, corporation or trust.

"Polygraph" means any mechanical or electronic instrument or device used to test or question individuals for the purpose of determining truthfulness.

"Polygraph examiner" means any person who uses a polygraph to test or question individuals for the purpose of determining truthfulness.

"Polygraph examiner intern" means any person engaged in the study of polygraphy and the administration of polygraph examinations under the personal supervision and control of a polygraph examiner.

1975, c. 522, § 54-916; 1988, c. 765; 1993, c. 499; 2010, c. 625.

§ 54.1-1801. Licenses
A. All polygraph examiners shall be licensed pursuant to this chapter.

B. All persons who operate any other detection device shall be licensed pursuant to this chapter.

1975, c. 522, § 54-918; 1988, c. 765; 2010, c. 625.

§ 54.1-1802. Repealed
Repealed by Acts 2010, c. 578, cl. 2.

§ 54.1-1802.1. Powers and duties of the Department

The Department shall administer and enforce the provisions of this chapter. In addition to the powers and duties otherwise conferred by the law, the Director shall have the powers and duties of a regulatory board as contained in §§ 54.1-201 and 54.1-202 and shall have the power and duty to:

1. Promulgate regulations necessary for the reasonable administration of this chapter in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Such regulations shall include, but not be limited to, the establishment of minimum qualifications for the operators of polygraphs and other detection devices;

2. Charge each applicant for licensure and for renewals of licensure a nonrefundable fee subject to the provisions of § 54.1-113 and subdivision A 4 of § 54.1-201; and

3. Conduct investigations to determine the suitability of applicants for licensure and to determine the licensee's compliance with applicable statutes and regulations.

2010, cc. 578, 625; 2012, c. 769.

§ 54.1-1803. Approval of schools to teach courses of instruction

The Director shall promulgate regulations for the approval of schools in which courses of instruction for polygraph examiners and persons who operate other detection devices approved pursuant to § 54.1-1805 are taught.

1975, c. 522, § 54-920; 1988, c. 765; 2010, c. 625.

§ 54.1-1804. Submission of fingerprints

Each applicant for licensure as a polygraph examiner, each polygraph examiner intern, and each applicant for licensure to operate any other detection device shall submit his fingerprints to the Department on a form provided by the Department.

1975, c. 522, § 54-921; 1988, c. 765; 2010, c. 625.

§ 54.1-1805. Instrument to be used

A. Each polygraph examiner shall use an instrument that records permanently and simultaneously the subject's cardiovascular and respiratory patterns as minimum standards, but such an instrument may record additional physiological changes pertinent to the determination of truthfulness.

B.1. The use of any other detection device that does not meet the instrumentation requirements set forth in subsection A shall be approved by the Director. The Director shall approve such other detection device only when the data collected by such device is deemed to be reliable and valid in detecting deception or verifying truth, based upon the preponderance of available scientific evidence. The voluntary, written consent of any individual to be tested using a detection device approved pursuant to this subsection shall be obtained prior to the administration of any such test or questioning using the device.

2. Any such approved device shall be subject to regulations promulgated by the Director regarding its use in the Commonwealth.

3. The Director shall establish standards of practice related to the use of any such other detection device approved pursuant to this subsection.

1975, c. 522, § 54-922; 1988, c. 765; 2010, c. 625.

§ 54.1-1806. Prohibition of use of certain questions on polygraph tests for employment
No licensed polygraph operator shall, during a polygraph examination required as a condition of employment, ask any question concerning the sexual activities of the person being examined if the question violates state or federal law. A violation of this section shall constitute grounds for disciplinary action pursuant to § 54.1-1802.1.

1989, c. 693; 2010, c. 578.

Chapter 19 - PRIVATE SECURITY SERVICES BUSINESSES [Repealed]

§§ 54.1-1900 through 54.1-1908. Repealed
Repealed by Acts 1992, c. 578, effective July 1, 1993.

Chapter 20 - PUBLIC ACCOUNTANCY [Repealed]

§§ 54.1-2000 through 54.1-2008. Repealed
Repealed by Acts 2001, ch. 832, cl. 2.

Chapter 20.1 - REAL ESTATE APPRAISERS

§ 54.1-2009. Definitions
As used in this chapter, unless the context clearly indicates otherwise:

"Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by subject matter into either a valuation or analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value. The term "appraiser" or "appraisal" may be used only by a person licensed or certified by the Board.

"Appraisal report" means any communications, written or oral, of an appraisal.

"Board" means the Real Estate Appraiser Board.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser. This designation is identified in Title 11, § 1116 (a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3345 (a)) as a "state certified real estate appraiser."

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of (i) all types of real estate and real property that a licensed residential real estate appraiser is permitted to appraise and (ii) such other real estate and real property as the Board, by regulation, may permit.

To the extent permitted by federal law and regulation, a certified residential real estate appraiser shall be considered a state certified real estate appraiser within the meaning of Title 11, § 1116 (a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3345 (a)).

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Evaluation" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.

"Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Resolution Trust Corporation, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

"Federally related transaction" means any real estate-related financial transaction which:

1. A federal financial institutions regulatory agency engages in, contracts for or regulates; and

2. Requires the services of an appraiser.

"General real estate appraisal" means an appraisal conducted by an individual licensed as a certified general real estate appraiser.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any residential real estate or real property of one to four family residential units as the Board, by regulation, may permit, and such other real estate and real property as the Board, by regulation, may permit.

This designation is identified in Title 11, § 1116 (c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3345 (c)) as a "state-licensed appraiser."

"Real estate" means an identified parcel or tract of land, including improvements thereon, if any.

"Real estate-related financial transaction" means any transaction involving:

1. The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

2. The refinancing of real property or interests in real property; or

3. The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

"Real property" means one or more defined interests, benefits or rights inherent in the ownership of real estate.

"Regulation" means any regulations promulgated by the Real Estate Appraiser Board pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

"Residential real estate appraisal" means an appraisal conducted by a licensed residential real estate appraiser or a certified residential real estate appraiser.

1990, c. 459; 1995, c. 327.

§ 54.1-2010. Exemptions from licensure

A. The provisions of this chapter shall not apply to:

1. A real estate broker or salesperson licensed in the Commonwealth who, in the ordinary course of business, provides a valuation or analysis of real estate for a fee; however, such person shall not hold himself out as a real estate appraiser, and the valuation shall not be referred to as an appraisal and shall not be used in lieu of an appraisal performed by a licensed appraiser.

2. An officer or employee of the United States of America, or of the Commonwealth or a political subdivision thereof, where the employee or officer is performing his official duties, provided that such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in the Commonwealth or any political subdivision thereof in connection with the appraisal of real estate or real property.

3. Any person who, in the ordinary course of business, provides consulting services or consultative brokerage for a fee, which services may include a valuation or analysis of real estate or standing or severed timber; provided such consulting services or consultative brokerage shall not be referred to as an appraisal and shall not be used in connection with obtaining a loan to finance or refinance real property or standing or severed timber or in connection with any federally related transaction.

4. Any person who, in the regular course of business, provides services to his employer, which services may include a valuation or analysis of real estate, provided such services shall not be referred to as an appraisal and shall not be used in lieu of an appraisal performed by an appraiser licensed hereunder.

5. Any person, or an employee of a financial institution or lender, who provides an evaluation of real estate or real property in connection with a real estate-related financial transaction where an appraisal by a state-certified or state-licensed appraiser is not required by the state or federal financial institution's regulatory agency engaging in, contracting for or regulating such real estate-related financial transaction or regulating the financial institution or lender engaged in or about to engage in such real estate-related financial transaction. The evaluations provided by such persons shall comply with any standards imposed by the state or federal financial institution's or

lender's regulatory agencies for evaluations prepared by nonstate-certified or nonstate-licensed appraisers.

B. Nothing contained herein shall proscribe the powers of a judge to determine who may qualify as an expert witness to testify in any legal proceeding.

1990, c. 459; 1992, c. 68; 1995, c. 327; 1999, c. 259.

§ 54.1-2011. Necessity for license

A. After December 31, 1992, except as provided in § 54.1-2010 and in subsections C and E of this section, it shall be unlawful to engage in the appraisal of real estate or real property for compensation or valuable consideration in this Commonwealth without first obtaining a real estate appraiser's license in accordance with Board regulations promulgated pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

B. After December 31, 1992, except as provided in § 54.1-2010, it shall be unlawful for any person who is not licensed pursuant to this chapter to perform an appraisal in connection with a federally related transaction.

C. Notwithstanding subsections A and B of this section, an individual who is not a licensed residential real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser may assist in the preparation of and sign an appraisal if:

1. The assistant is under the direct supervision of a licensed residential real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser; and

2. The appraisal is reviewed, attested to be accurate and complete, and signed by such licensed residential real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser in accordance with this chapter.

D. This chapter shall not prevent or affect the practice of any profession or trade for which licensing, certification, or registration is required under any other Virginia law.

E. A corporation, partnership, or other business entity may provide appraisal services if each appraisal is prepared and signed by an individual licensed in accordance with this chapter and such corporation, partnership, or other business entity has registered with the Board. However, any appraisal management company that is required to be licensed under § 54.1-2021.1 shall not be required to have an additional license under this section.

F. An appraiser engaged by an appraisal management company to perform appraisal services shall disclose the actual fee paid to the appraiser by the appraisal management company as part of the appraisal report. The disclosure of such fee shall not be prohibited by the appraisal management company as otherwise provided in § 54.1-2022.

1990, c. 459; 1992, c. 338; 2012, c. 405.

§ 54.1-2012. Real Estate Appraiser Board; membership; chairman; meetings; seal

A. The Real Estate Appraiser Board shall be composed of 10 members as follows: (i) six members shall be licensed as real estate appraisers, provided that, at all times, at least two of the appraiser members on the Board shall be certified general real estate appraisers and one shall be a certified residential real estate appraiser, and provided further, that all six appraiser members have been licensed for a period of at least five years prior to their appointment; (ii) one member shall be an officer or employee familiar with mortgage lending of a financial institution as defined in § 6.2-100 or an affiliate or subsidiary thereof; (iii) one member shall be an officer or employee of an appraisal management company; and (iv) two members shall be citizen members. The terms of Board members shall be four years.

The appointment of appraiser members may be made from lists of at least three names each, submitted by Virginia affiliates of professional appraisal organizations that are members of the Appraisal Foundation. The appointment of the bank or savings institution member may be made from lists of at least three names each, submitted by the Virginia Bankers Association and the Virginia Association of Community Banks. The appointment of the appraisal management company member may be made from lists of at least three names each, submitted by the Virginia Bankers Association. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the above organizations of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

Notwithstanding § 54.1-200, all members of the Board, including the citizen members, shall be eligible to participate in all matters, including decisions regarding the examination of applicants for licensure and decisions regarding the professional competence of licensees.

The Board shall elect a chairman and a vice-chairman from its membership, provided that the chairman shall be an appraiser member.

The Board shall meet at least once each year, and additional meetings may be called by the chairman or, if the chairman is incapacitated, by the vice-chairman, as deemed necessary.

The Board shall adopt a seal by which it shall authenticate its proceedings.

B. As soon as practicable, the Board shall determine the anticipated availability of licensed and certified appraisers to perform appraisals in Virginia. If, at any time, the Board determines that there is, or will be, a scarcity of certified general real estate appraisers, certified residential real estate appraisers, or licensed residential real estate appraisers to perform appraisals in connection with federally related transactions in any part of Virginia that leads, or will lead, to significant delays in the performance of such appraisals, the Board, subject to federal approval, shall extend the effective date of the licensing requirements of this chapter to the extent permitted under any temporary waiver granted under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. § 3301 et seq.).

1990, c. 459; 1992, c. 68; 1999, cc. 208, 505; 2010, c. 91; 2012, cc. 405, 522.

§ 54.1-2013. General powers of Real Estate Appraiser Board; regulations; educational requirements for licensure

The Board shall have all of the powers of a regulatory board under Chapter 2 (§ 54.1-200 et seq.). The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter, Chapter 20.2 (§ 54.1-2020 et seq.), and all things required or expected of a state appraiser certifying and licensing agency under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3331 et seq.). The Board shall promulgate necessary regulations.

The Board shall include in its regulations educational and experience requirements as conditions for licensure, provisions for the supervision of appraiser practices, provisions for the enforcement of standards of professional appraiser practice, and provisions for the disposition of referrals of improper appraiser conduct from any person or any federal agency or instrumentality. This paragraph shall not be construed to limit the powers and authority of the Board.

The Board may set different education and experience requirements for licensed residential real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers. All applicants for licensure under this chapter shall meet applicable educational and experience requirements prior to licensure.

Applicants for licensure as a certified residential real estate appraiser or a certified general real estate appraiser shall successfully complete an examination administered or approved by the Board prior to licensure. The Board may set different examination requirements for certified residential real estate appraisers and certified general real estate appraisers. The Board may require that licensed residential real estate appraisers successfully complete an examination administered or approved by the Board prior to licensure or prior to the renewal of an initial license.

All regulations established by the Board shall satisfy any minimum criteria that are necessary in order that the federal financial institution's regulatory agencies recognize and accept licenses for licensed residential real estate appraisers, certified residential real estate appraisers, certified general real estate appraisers, and appraisal management companies issued by the Board.

1990, c. 459; 1992, c. 68; 1993, c. 539; 2010, c. 91; 2014, c. 210.

§ 54.1-2013.1. Expired

Expired.

§ 54.1-2014. Continuing education

The Board may establish in regulations requirements for continuing education as a prerequisite to renewal of a license issued under this chapter.

1990, c. 459 .

§ 54.1-2015. Subpoena power

In addition to all other authority to issue subpoenas, the Board or its designees shall have the authority to subpoena the records of any bank, savings institution, or credit union relating to real estate appraisals.

1990, c. 459 .

§ 54.1-2016. Additional licenses

A. The Board may establish in regulations other categories of licensure, as well as the conditions required for such licensure, in order to safeguard the public interest or as may be required to satisfy any additional qualification criteria adopted by any federal agency or instrumentality.

B. Unless expressly prohibited by federal law or regulation, an individual who is certified or licensed as a real estate appraiser in another jurisdiction may obtain a Virginia real estate appraiser's license if (i) the Board determines that the requirements for certification or licensure, as the case may be, in such jurisdiction are substantially equivalent to the requirements for licensure under this chapter, and (ii) the applicant meets such other requirements as may be established by the Board.

C. In accordance with Title 11, § 1122 (a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3351 (a)), the Board shall adopt regulations that provide for temporary practice in Virginia by appraisers licensed or certified by another state.

1990, c. 459 .

§ 54.1-2017. Use of terms "Licensed Residential Real Estate Appraiser," "Certified Residential Real Estate Appraiser," and "Certified General Real Estate Appraiser"; authentication of reports

An individual who is not licensed by the Board as a certified general real estate appraiser, a certified residential real estate appraiser, or a licensed residential real estate appraiser shall not represent himself as being so licensed or use in connection with his name or place of business the term "real estate appraiser," "general real estate appraiser," "certified general real estate appraiser," "licensed residential real estate appraiser," "certified residential real estate appraiser," "state certified real estate appraiser," "state licensed real estate appraiser," or any words, letters, abbreviations, or insignia indicating or implying that he is licensed as a certified general real estate appraiser, a licensed residential real estate appraiser, or a certified residential real estate appraiser in this Commonwealth.

Each licensed residential real estate appraiser, certified residential real estate appraiser, and certified general real estate appraiser shall comply with the standards of professional appraisal practice and code of ethics adopted by the Board and shall authenticate all written appraisal reports with his signature, license designation and license number.

All appraisal reports rendered in connection with federally related transactions shall be written.

1990, c. 459; 1999, c. 57.

§ 54.1-2018. Roster of appraisers

A roster showing the names and addresses of all licensed residential real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers shall be published annually and made available to all interested parties at a cost, as determined by the Director.

1990, c. 459 .

§ 54.1-2019. Consent to suits and service of process of nonresidents; manner of service

A. Every nonresident applicant shall file with the Board an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county or city of this Commonwealth in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this Commonwealth on the Director of the Department of Professional and Occupational Regulation. The consent shall stipulate that such service of process or pleadings on the Director shall be taken and held in all courts to be as valid and binding as if due service has been made upon the applicant in the Commonwealth of Virginia.

B. Any process or pleading served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the licensee at the last known address.

1990, c. 459; 1993, c. 499 .

Chapter 20.2 - REAL ESTATE APPRAISAL MANAGEMENT COMPANIES

§ 54.1-2020. Definitions

A. As used in this chapter, unless the context clearly requires otherwise:

"Appraisal management company" means a person or entity that (i) administers a network of independent contract appraisers, receives requests for appraisals from clients, and receives a fee paid by the client for the appraisals and (ii) enters into an agreement with one or more independent appraisers in its network to perform the appraisals contained in the request.

"Appraisal services" means acting as an appraiser to provide an appraisal or appraisal review.

"Appraiser" means a person licensed or certified under § 54.1-2017 and as otherwise provided in Chapter 20.1 (§ 54.1-2009 et seq.).

"Board" means the Virginia Real Estate Appraiser Board.

"Employee" means an individual who has an employment relationship acknowledged by both the individual and the company and is treated as an employee for purposes of compliance with federal income tax laws.

"Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

B. The definitions contained in § 54.1-2009 shall be applicable except to the extent inconsistent with the definitions contained in this chapter.

2010, c. 508; 2012, c. 405.

§ 54.1-2021. Exemptions

The provisions of this chapter shall not apply to:

1. Any agency of the federal government or any agency of the Commonwealth or local government;

2. Any person or entity that exclusively employs persons on an employer and employee basis for the performance of appraisal services;

3. Any person or entity licensed pursuant to § 54.1-2017 that has as its primary business the performance of appraisal services in the Commonwealth in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) and with the Uniform Standards of Professional Appraisal Practice;

4. Any person or entity licensed pursuant to § 54.1-2017 that has as its primary business the performance of appraisal services in the Commonwealth but that in the normal course of business enters into an agreement with an independent contract appraiser for the performance of appraisal services that the contracting entity cannot complete either because of the location or type of property in question;

5. Any licensed real estate broker performing activities in accordance with Chapter 21 (§ 54.1-2100 et seq.);

6. Any officer or employee of an exempt entity described in this chapter when acting in the scope of employment for the exempt entity;

7. An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under the Truth in Lending Act (15 U.S.C. § 1601 et seq.); or

8. A department or unit within a financial institution that is subject to direct regulation by an agency of the United States government that is a member of the Federal Financial Institutions Examination Council or its successor, or to regulation by an agency of this state, that receives a request for the performance of an appraisal from one employee of the financial institution, and another employee of the same financial institution assigns the request for the appraisal to an appraiser that is an independent contractor to the institution, except that an appraisal management company that is a wholly owned subsidiary of a financial institution shall not be considered a department or unit within a financial institution for the purposes of this subdivision.

2010, c. 508; 2012, c. 405.

§ 54.1-2021.1. Appraisal management companies; license required; posting of bond or letter of credit

A. No person shall engage in business as an appraisal management company without a license issued by the Board.

B. The Board may issue a license to do business as an appraisal management company in the Commonwealth to any applicant who has submitted a complete application and provides satisfactory evidence that he has successfully:

1. Completed all requirements established by the Board that are consistent with this chapter and are reasonably necessary to implement, administer, and enforce the provisions of this chapter; and

2. Certified to the Board the following information, and such other information as may be reasonably required by the Board, regarding the person or entity seeking licensure:

a. The name of the person or entity;

b. The business address of the person or entity;

c. Phone contact information for the person or entity, and email address;

d. If the entity is not an entity domiciled in the Commonwealth, the name and contact information for the entity's agent for service of process in the Commonwealth;

e. If the entity is not an entity domiciled in the Commonwealth, proof that the entity is properly and currently registered with the Virginia State Corporation Commission;

f. The name, address, and contact information for any person or any entity that owns 10 percent or more of the appraisal management company;

g. The name, address, and contact information for a responsible person for the appraisal management company located in the Commonwealth, who shall be a person or entity licensed under Chapter 20.1 (§ 54.1-2009 et seq.);

h. That any person or entity that owns 10 percent or more of the appraisal management company has never had a license to act as an appraiser refused, denied, canceled, or revoked by the Commonwealth or any other state;

i. That the entity has a system in place to review the work of all appraisers that may perform appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice;

j. That the entity maintains a detailed record of the following: (i) each request for an appraisal service that the appraisal management company receives; (ii) the name of each independent appraiser that performs the appraisal; (iii) the physical address or legal identification of the subject property; (iv) the name of the appraisal management company's client for the appraisal; (v) the amount paid to the appraiser; and (vi) the amount paid to the appraisal management company; and

k. That the entity has a system in place to ensure compliance with § 129E of the Truth in Lending Act (15 U.S.C. § 1601 et seq.).

C. Any person that owns 10 percent or more of an appraisal management company and any controlling person of an appraisal management company seeking to be licensed pursuant to this chapter shall be of good moral character, as determined by the Board, and shall submit to a background investigation, as determined by the Board.

D. In addition to the filing fee, each applicant for licensure shall post either a bond or a letter of credit as follows:

1. If a bond is posted, the bond shall (i) be in the amount of $100,000 or any other amount as set by regulation of the Board, (ii) be in a form prescribed by regulation of the Board, and (iii) accrue to the Commonwealth for the benefit of (a) a claimant against the licensee to secure the faithful performance of the licensee's obligations under this chapter or (b) an appraiser who has performed an appraisal for the licensee for which the appraiser has not been paid. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond. When a claimant or an appraiser is awarded a final judgment in a court of competent jurisdiction against a licensee of this section for the licensee's failure to faithfully perform its obligations under this chapter or failure to pay an appraiser who performed an appraisal, the claimant or the appraiser may file a claim with the Board for a directive ordering payment from the bond issuer of the amount of the judgment, court costs and reasonable attorney fees as awarded by the court. Such claim shall be filed with the Board no later than 12 months after the judgment becomes final. Upon receipt of the claim against the licensee, the Board may cause its own investigation to be conducted. The amount of the bond shall be restored by the licensee to the full amount required within 15 days after the payment of any claim on the bond. If the licensee fails to restore the full amount of the bond, the Board shall immediately revoke the license of the licensee whose conduct resulted in payment from the bond.

2. If a letter of credit is posted, the letter of credit shall (i) be in the amount of $100,000 or any other amount as set by regulation of the Board, (ii) be irrevocable and in a form approved by the Board, payable to the Department of Professional Occupational Regulation, and (iii) be for the use and the benefit of (a) a claimant against the licensee to secure the faithful performance of the licensee's obligations under this chapter or (b) an appraiser who has performed an appraisal for the licensee for which the appraiser has not been paid. The aggregate liability on the letter of credit shall not exceed the principal sum of the letter of credit. When a claimant or an appraiser is awarded a final judgment in a court of competent jurisdiction against a licensee of this section for the licensee's failure to faithfully perform its obligations under this chapter or failure to pay an appraiser who performed an appraisal, the claimant or the appraiser may file a claim with the Board for a directive ordering payment from the issuer of the letter of credit of the amount of the judgment, court costs and reasonable attorney fees as awarded by the court. Such claim shall be

filed with the Board no later than 12 months after the judgment becomes final. Upon receipt of the claim against the licensee, the Board may cause its own investigation to be conducted. Upon a draw against a letter of credit, the licensee shall provide a new letter of credit in the amount required by this subdivision within 15 days after payment of any claim on the letter of credit. If the licensee fails to restore the full amount of the letter of credit, the Board shall immediately revoke the license of the licensee whose conduct resulted in payment from the bond.

2012, c. 405; 2014, c. 210.

§ 54.1-2022. Appraisal management companies

A. An appraisal management company shall not enter into any contracts or agreements with an independent appraiser for the performance of real estate appraisal services unless the independent appraiser is licensed to provide that service under § 54.1-2017 and as otherwise provided in Chapter 20.1 (§ 54.1-2009 et seq.).

B. The appraisal management company shall not prohibit an appraiser from disclosing in the appraisal report the actual fees charged by an appraiser for appraisal services, and shall otherwise comply with any applicable requirements of federal law including the requirements of the United States Department of Housing and Urban Development.

C. No employee, director, officer, or agent of an appraisal management company shall influence or attempt to influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner, including:

1. Withholding or threatening to withhold timely payment for a real estate appraisal report;

2. Withholding or threatening to withhold future business from a real estate appraiser or demoting or terminating or threatening to demote or terminate a real estate appraiser;

3. Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser;

4. Conditioning the ordering of a real estate appraisal report or the payment of a real estate appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate requested from a real estate appraiser;

5. Requesting or requiring that a real estate appraiser provide an estimated, predetermined, or desired valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report;

6. Providing to a real estate appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or targeted amount to be loaned to the borrower. However, a real estate appraiser may be provided with a copy of the sales contract for purchase transactions;

7. Allowing the removal of a real estate appraiser from a list of qualified appraisers used by any entity without prior written notice to the appraiser. The notice shall include written evidence of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal Practice or licensing standards for appraisers in the Commonwealth; or

8. Any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, or impartiality.

D. The appraisal management company shall not engage in any of the following:

1. Requesting or requiring a real estate appraiser to collect a fee from the borrower, homeowner, or any other person in the provision of real estate appraisal services;

2. Altering, modifying, or otherwise changing a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent;

3. Use an appraisal report submitted by an independent appraiser for any other transaction, purpose or use other than for that which the appraisal was prepared; however, nothing in this section shall be construed as prohibiting an appraisal management company from providing a copy of the appraisal to a federal or state agency in the normal course of business or when providing a copy of the appraisal is otherwise required by law;

4. Requesting or requiring an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents, employees or independent contractors for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees or independent contractors and not the services performed by the appraiser; or

5. Requesting or requiring an appraiser to provide the company with the appraiser's digital signature or seal.

E. Nothing in this section shall be construed as prohibiting an appraisal management company from requesting that a real estate appraiser:

1. Consider additional appropriate property information;

2. Provide further detail, substantiation, or explanation for the real estate appraiser's value conclusion; or

3. Correct errors in the real estate appraisal report.

2010, c. 508; 2012, c. 405; 2013, c. 353.

§ 54.1-2022.1. Appraiser compensation

An appraisal management company shall compensate appraisers in compliance with § 129E(i) of the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and regulations promulgated thereunder.

2015, c. 422.

§ 54.1-2023. Penalty

In addition to the powers vested in the Board, in any action brought under this chapter, if a court finds that a person has willfully engaged in an act or practice in violation of this chapter, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than $10,000 per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the locality notifies the alleged violator by certified mail that an act or practice is a violation of this chapter and the alleged violator, after receipt of the notice, continues to engage in the act or practice.

Violations of this chapter shall constitute separate and distinct offenses. If the acts or activities violating this chapter also violate another provision of law, an action brought under this chapter shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition or any penalties provided for thereby.

2010, c. 508; 2012, c. 405.

Chapter 21 - REAL ESTATE BROKERS, SALES PERSONS AND RENTAL LOCATION AGENTS

Article 1 - REGULATION OF REAL ESTATE BROKERS, SALESPERSONS AND RENTAL LOCATION AGENTS

§ 54.1-2100. Definitions

As used in this chapter:

"Distance learning" means instruction delivered by an approved provider through a medium other than a classroom setting. Such courses shall be those offered by an accredited university, college, community college, high school offering adult distributive education courses, other school or educational institution, or real estate professional association or related entities.

"Real estate broker" means any person or business entity, including, but not limited to, a partnership, association, corporation or limited liability company, who, for compensation or valuable consideration (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest as defined in § 55-426, or time-shares in a time-share program even though they may be deemed to be securities, or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others.

Code 1950, § 54-730; 1974, c. 409; 1982, c. 440; 1984, c. 283; 1988, c. 765; 1996, c. 993; 2001, c. 548; 2007, c. 809.

§ 54.1-2101. Real estate salesperson defined

For the purposes of this chapter, "real estate salesperson" means any person, or business entity of not more than two persons unless related by blood or marriage, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange of real estate, or to lease, rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon.

Code 1950, § 54-731; 1974, c. 685; 1978, c. 138; 1984, c. 201; 1988, c. 765; 1992, c. 84; 1996, c. 993.

§ 54.1-2101.1. Preparation of real estate contracts by real estate licensees

Notwithstanding any rule of court to the contrary, any person licensed under this chapter may prepare written contracts for the sale, purchase, option, exchange, or rental of real estate provided the preparation of such contracts is incidental to a real estate transaction in which the licensee (i) is involved and (ii) does not charge a separate fee for preparing the contracts.

1997, cc. 200, 231.

§ 54.1-2102. Repealed

Repealed by Acts 1992, c. 84 .

§ 54.1-2103. Exemptions from chapter

A. The provisions of this chapter shall not apply to:

1. Any person, partnership, association, corporation, entity, or their regular employees, who as owner or lessor perform any of the acts enumerated in §§ 54.1-2100 and 54.1-2101 with reference to property owned or leased by them, where the acts are performed in the regular course of or incident to the management of the property and the investment therein. For property governed by Chapter 21 (§ 55-360 et seq.) of Title 55, the term "owner" for purposes of this subdivision shall include affiliated entities, provided that (i) the owner has a controlling interest in the affiliated entity or (ii) the affiliated entity and the owner have a common parent company;

2. Any person acting without compensation as attorney-in-fact under a power of attorney issued by a property owner solely for the purpose of authorizing the final performance required of such owner under a contract for the sale, lease, purchase, or exchange of real estate;

3. Service rendered by an attorney-at-law in the performance of his duties as such;

4. A person acting as a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court;

5. A trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof;

6. Any corporation managing rental housing when the officers, directors, and members in the ownership corporation and the management corporation are the same and the management corporation manages no other property for other persons, partnerships, associations, or corporations;

7. Any existing tenant of a residential dwelling unit who refers a prospective tenant to the owner of the unit or to the owner's duly authorized agent or employee and for the referral receives, or is offered, a referral fee from the owner, agent or employee;

8. Any auctioneer licensed in accordance with Chapter 6 (§ 54.1-600 et seq.) of this title selling real estate at public auction when employed for such purpose by the owner of the real estate and provided the bidding at such auction is held open for no longer than forty-eight hours. An auctioneer shall not advertise that he is authorized to sell real estate. An auctioneer may advertise for sale at public auction any real estate when employed to do so as herein provided, and may advertise that he is authorized to auction real estate at public auction;

9. [Expired.]

10. Any person who is licensed and is in good standing as a real estate broker or salesperson in another state, and who assists a prospective purchaser, tenant, optionee, or licensee located in another state to purchase, lease, option, or license an interest in commercial real estate, as defined in § 55-526, in the Commonwealth. Such real estate licensee from another state may be compensated by a real estate broker in the Commonwealth. Nothing in this subdivision shall be construed to permit any person not licensed and in good standing as a real estate broker or salesperson in the Commonwealth to otherwise act as a real estate broker or salesperson under this chapter.

B. The provisions of this chapter shall not prohibit the selling of real estate (i) by an attorney-at-law in the performance of his duties as such, (ii) by a receiver, trustee in bankruptcy, administrator or executor, a special commissioner or any person selling real estate under order of court, or (iii) by a trustee acting under the trust agreement, deed of trust or will, or the regular salaried employees thereof.

C. The provisions of this chapter shall not apply to any salaried person employed by a licensed real estate broker for and on behalf of the owner of any real estate or the improvements thereon which the licensed broker has contracted to manage for the owner if the actions of such salaried employee are limited to (i) exhibiting residential units on such real estate to prospective tenants, if the employee is employed on the premises of such real estate; (ii) providing prospective tenants with factual information about the lease of residential real estate; (iii) accepting applications for lease of such real estate; and (iv) accepting security deposits and rentals for such real estate. Such deposits and rentals shall be made payable to the owner or the broker employed by such owner. The salaried employee shall not negotiate the amounts of such security deposits or rentals and shall not negotiate any leases on behalf of such owner or broker.

D. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

E. An attorney-at-law referring a client to a licensee shall not be entitled to receive any compensation from a listing firm or offered by a common source information company to cooperating brokers, unless the attorney is also licensed under this chapter as a real estate broker or salesperson.

Code 1950, § 54-734; 1972, c. 324; 1973, cc. 487, 527; 1975, c. 238; 1980, c. 127; 1982, cc. 633, 682; 1988, c. 765; 1992, c. 84; 1993, cc. 816, 899; 1995, c. 227; 1998, cc. 261, 262; 2009, cc. 88, 262; 2015, cc. 24, 272.

§ 54.1-2104. Real Estate Board; membership; chairman; seal

The Real Estate Board shall be composed of nine members as follows: seven members who have been licensed real estate brokers or salespersons for at least five consecutive years before their appointment and two citizen members. The terms of Board members shall be four years.

The Board shall elect a chairman from its membership.

The Board shall adopt a seal by which it shall authenticate its proceedings.

Code 1950, §§ 54-737, 54-738, 54-739, 54-744; 1956, c. 145; 1981, c. 447; 1984, c. 201; 1985, c. 448; 1988, cc. 42, 765; 1992, c. 809; 2010, c. 91.

§ 54.1-2105. General powers of Real Estate Board; regulations; educational and experience requirements for licensure

A. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.

B. The Board shall adopt regulations establishing minimum educational requirements as conditions for licensure. Board regulations relating to initial licensure shall include the following requirements:

1. Every applicant for an initial license as a real estate salesperson shall have:

a. At a minimum, a high school diploma or its equivalent; and

b. Completed a course in the principles of real estate that carried an academic credit of at least four semester hours, but not less than 60 hours of classroom, correspondence, or other distance learning instruction, offered by an accredited university, college, community college, high school offering adult distributive education courses, or other school or educational institution offering an equivalent course.

2. Every applicant for an initial license as a real estate broker shall have:

a. At a minimum, a high school diploma or its equivalent; and

b. Completed not less than 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses offered by an accredited university, college, community college, or other school or educational institution offering equivalent courses.

3. Every applicant for a license by reciprocity as a real estate salesperson or real estate broker shall have:

a. Completed a course in the principles of real estate that is comparable in content and duration and scope to that required in subdivision 1 or 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses that are comparable in content and duration and scope to that required in subdivision 2; and

b. If currently licensed by another state as a real estate salesperson or broker, passed Virginia's examination.

C. The Board may waive any requirement under the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. No regulation imposing educational requirements for initial licensure beyond those specified by law shall apply to any person who was licensed prior to July 1, 1975, and who has been continuously licensed since that time, except that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed as a broker from the educational requirements established for brokers.

D. The Board shall establish criteria to ensure that prelicensure and broker licensure courses meet the standards of quality deemed by the Board to be necessary to protect the public interests. For correspondence and other distance learning instruction offered by an approved provider, such criteria may include appropriate testing procedures. The Board may establish procedures to ensure the quality of the courses.

Noncollegiate institutions shall not be authorized to grant collegiate semester hours for academic credit.

The specific content of the real estate courses shall be in real estate brokerage, real estate finance, real estate appraisal, real estate law, and such related subjects as are approved by the Board.

E. The Board may establish criteria delineating the permitted activities of unlicensed individuals employed by real estate licensees or under the supervision of a real estate broker.

F. The Board may take a disciplinary case against a licensee under advisement, defer a finding in such case, and dismiss such action upon terms and conditions set by the Board.

Code 1950, § 54-740; 1974, c. 663; 1977, c. 3; 1980, c. 571; 1981, c. 117; 1984, cc. 201, 283; 1985, c. 116; 1988, cc. 9, 765; 1989, c. 244; 1991, c. 576; 1992, cc. 65, 446, 624, 717; 1995, c. 125; 1996, cc. 890, 903; 1997, c. 389; 1998, c. 268; 2000, c. 759; 2003, cc. 998, 1027; 2006, cc. 61, 627; 2007, c. 809; 2010, cc. 373, 637; 2012, c. 750; 2016, c. 334.

§ 54.1-2105.01. Educational requirements for all salespersons within one year of licensure

A. The Board shall establish guidelines for an educational curriculum of at least 30 hours of classroom, or correspondence or other distance learning, instruction, in specified areas, which shall be required of all salespersons within one year of issuance of a license by the Board. Failure

of a new licensee to complete the 30-hour curriculum within one year of obtaining a real estate salesperson's license shall result in the license being placed on inactive status by the Board until the curriculum has been completed.

B. To establish the guidelines required by this section, the Board shall establish an industry advisory group composed of representatives of the practices of (i) residential real estate, (ii) commercial real estate, and (iii) property management. The industry advisory group shall consist of licensed real estate salespersons and real estate brokers who shall be appointed by and shall meet at the direction of the Board, at least annually, to update the guidelines. The Board shall review and may approve educational curricula developed by an approved school or other provider of real estate education authorized by this chapter. The industry advisory group shall serve at no cost to the Board.

C. The curricula for new licensees shall include topics that new licensees need to know in their practices, including contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, flood hazard areas and the National Flood Insurance Program, property owners' and condominium association law, landlord-tenant law, Board regulations, and such other topics as designated by the Board. The continuing education requirements of this section for new licensees shall be in lieu of the continuing education requirements otherwise specified in this chapter and Board regulations.

2007, c. 809; 2011, c. 461; 2015, c. 692.

§ 54.1-2105.02. Regulation of real estate education providers and courses

A. The Board may regulate any school that is established to offer real estate courses except such schools as are regulated by another state agency. Such authority shall include, but not be limited to, qualification of instructors, approval of course curricula, and requirement that such schools submit evidence of financial responsibility to ensure that these schools protect the public health, safety, and welfare.

B. Board regulations shall include a procedure for processing applications of educational institutions, real estate professional associations, or related entities, to provide continuing education courses, which procedure, at a minimum, shall (i) provide for a broad range of subject matters suitable for the continuing education of licensed professionals in a multifamily residential and commercial office, as well as single-family residential, sales, leasing and property management; (ii) acknowledge, in writing, receipt of such applications within 10 calendar days after receipt; and (iii) provide written notification to the applicant, within 75 calendar days of receipt of the application, whether the application has been approved or disapproved, and if disapproved, the reasons therefor. In addition, the Board shall prepare a comprehensive listing of courses, pre-approved by the Board, related to the professional competency requirements for the multifamily residential and commercial office industries.

Board regulations shall include criteria for evaluating and approving continuing education course credits and for awarding credit hours for such courses, as well as procedures for ensuring the

quality of real estate courses. The Board shall approve recommended course titles, content, and hours of continuing education credit developed and published by national professional real estate trade associations, unless the Board determines in writing that such titles, content, or credit hours should not be approved and specifies the reasons therefor.

2007, c. 809.

§ 54.1-2105.03. Continuing education; relicensure of brokers and salespersons

A. Board regulations shall include educational requirements as a condition for relicensure of brokers and salespersons to whom active licenses have been issued by the Board beyond those now specified by law as conditions for licensure.

1. Brokers to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 24 hours of classroom or correspondence or other distance learning instruction during each licensing term. Of the total 24 hours, the curriculum shall consist of:

a. A minimum of eight required hours to include at least three hours of ethics and standards of conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging trends, flood hazard areas and the National Flood Insurance Program, real estate agency, and real estate contracts;

b. A minimum of eight hours of courses relating to supervision and management of real estate agents and the management of real estate brokerage firms as are approved by the Board; and

c. Eight hours of general elective courses as are approved by the Board.

The Board may, on a year-by-year basis, adjust the required hours and course topics specified in this subdivision for the next succeeding year, applicable to a licensee in the next renewal period for his license, including the addition of topics deemed by the Board to be essential. Such designation or adjustment by the Board shall be made prior to September 1 of any given calendar year. The action of the Board in making such adjustment shall be subject to § 2.2-4012.1.

The fair housing requirements shall include an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations.

2. Salespersons to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 16 hours of classroom or correspondence or other distance learning instruction during each licensing term. Of the total 16 hours, the curriculum shall consist of:

a. A minimum of eight required hours to include at least three hours of ethics and standards of conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging

trends, real estate agency, real estate contracts, and flood hazard areas and the National Flood Insurance Program; and

b. Eight hours of general elective courses as are approved by the Board.

The Board may, on a year-by-year basis, readjust the required hours and course topics specified in this subdivision for the next succeeding year, applicable to a licensee in the next renewal period for his license, including the addition of topics deemed by the Board to be essential. Such designation or adjustment by the Board shall be made prior to September 1 of any given calendar year. The action of the Board in making such adjustment shall be subject to § 2.2-4012.1.

3. The Board shall approve a continuing education curriculum of not less than three hours, and as of July 1, 2012, every applicant for relicensure as an active broker or salesperson shall complete at a minimum one three-hour continuing education course on the changes to residential standard agency effective as of July 1, 2011, to Article 3 (§ 54.1-2130 et seq.) prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in residential representation shall not be required. A licensee who takes one three-hour continuing education class on residential representation shall satisfy the requirements for continuing education and may, but shall not be required to, take any further continuing education on residential standard agency.

The fair housing requirements shall include an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations.

4. For correspondence and other distance learning instruction offered by an approved provider, the Board shall establish the appropriate testing procedures to verify completion of the course and require the licensee to file a notarized affidavit certifying compliance with the course requirements. The Board may establish procedures to ensure the quality of the courses. The Board shall not require testing for continuing education courses completed through classroom instruction.

B. Every applicant for relicensure as an active salesperson or broker shall complete the continuing education requirements prior to each renewal or reinstatement of his license. The continuing education requirement shall also apply to inactive licensees who make application for an active license. Notwithstanding this requirement, military personnel called to active duty in the armed forces of the United States may complete the required continuing education within six months of their release from active duty.

C. The Board shall establish procedures for the carryover of continuing education credits completed by licensees from the licensee's current license period to the licensee's next renewal period.

D. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship as demonstrated to the Board.

2007, c. 809; 2011, c. 461; 2012, c. 750; 2015, c. 692; 2016, c. 334.

§ 54.1-2105.04. Education requirements; reactivation of licenses; waiver

A. Board regulations shall include remedial educational requirements for any salesperson or broker who has been inactive for more than three years. The regulations shall require the applicant to meet the educational requirements for a salesperson or broker in effect at the time either becomes active.

B. When the license has been inactive for more than three years, the Board may waive the educational requirements for reactivation of a license under the following conditions: (i) during the time the license has been inactive, the holder of such inactive license has been engaged in an occupation whereby the knowledge of real estate would be retained or (ii) the holder of such license is a member or the spouse of a member of the armed forces of the United States who has been permanently assigned outside Virginia for a portion of the time the license has been inactive, and the holder of the inactive license remained current in the field of real estate and demonstrates this fact to the satisfaction of the Board.

C. The Board or its agent shall require proof of identity prior to an applicant taking the state examination.

2007, c. 809.

§ 54.1-2105.1. Other powers and duties of the Real Estate Board

In addition to the provisions of §§ 54.1-2105.01 through 54.1-2105.04, the Board shall:

1. Develop a residential property disclosure statement form for use in accordance with the provisions of Chapter 27 (§ 55-517 et seq.) of Title 55. The Board shall also include on its website the notice required by subsection B of § 55-519; and

2. Inform licensed brokers, in a manner deemed appropriate by the Board, of the broker's ability to designate an agent pursuant to § 54.1-2109 in the event of the broker's death or disability.

1993, c. 958; 2000, c. 759; 2007, cc. 265, 809; 2008, cc. 851, 871; 2011, c. 461; 2014, cc. 24, 705.

§ 54.1-2105.2. Cease and desist orders for unlicensed activity; civil penalty

A. Notwithstanding any other provision of law, the Board may issue an order requiring any person to cease and desist from acting as a real estate broker or salesperson when such person is not licensed by the Board in accordance with this chapter. The order shall be effective upon its entry and shall become final unless such person files an appeal with the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) within 21 days of the date of entry of the order.

B. If the person fails to cease and desist the unlicensed activity after entry of an order in accordance with subsection A, the Board may refer the matter for enforcement pursuant to § 54.1-306.

C. Any person engaging in unlicensed activity shall be subject to further proceedings before the Board and the Board may impose a civil penalty not to exceed $1,000 for any real estate transaction or the compensation received from any such real estate transaction, whichever is greater. Any penalties collected under this section shall be paid to the Literary Fund after deduction of the administrative costs of the Board in furtherance of this section.

2005, c. 437.

§ 54.1-2106. Repealed

Repealed by Acts 1996, c. 993.

§ 54.1-2106.1. Licenses required

A. No business entity, other than a sole proprietorship, shall act, offer to act, or advertise to act, as a real estate firm without a real estate firm license from the Board. Such firm may be granted a license in a fictitious name. No business entity shall be granted a firm license unless (i) every managing member of a limited liability company, officer of a corporation, partner within a partnership, or associate within an association who actively participates in the firm brokerage business holds a license as a real estate broker; and (ii) every employee or independent contractor who acts as a salesperson for such business entity holds a license as a real estate salesperson or broker. An individual holding a broker's license may operate a real estate brokerage firm which he owns as a sole proprietorship without any further licensure by the Board, although such individual shall not operate the brokerage firm in a fictitious name. However, nothing herein shall be construed to prohibit a broker operating a brokerage firm from having a business entity separate from the brokerage firm for such broker's own real estate business, provided that such separate business entity otherwise complies with this section. A non-broker-owned sole proprietorship shall obtain a license from the Board.

B. No individual shall act as a broker without a real estate broker's license from the Board. An individual who holds a broker's license may act as a salesperson for another broker. A broker may be an owner, member, or officer of a business entity salesperson as defined in subsection C.

C. No individual shall act as a salesperson without a salesperson's license from the Board. A business entity may act as a salesperson with a separate business entity salesperson's license from the Board. No business entity shall be granted a business entity salesperson's license unless every owner or officer who actively participates in the brokerage business of such entity holds a license as a salesperson or broker from the Board. The Board shall establish standards in its regulations for the names of business entity salespersons when more than one licensee is an owner or officer.

1996, c. 993; 1998, c. 265; 1999, cc. 82, 105; 2008, c. 319; 2012, c. 750.

§ 54.1-2106.2. Certification of audit on renewal of firm or sole proprietorship license

When submitting a renewal of any firm or sole proprietorship license, the principal broker or supervising broker of the firm shall certify that he has audited or has caused to be audited the operations, policies, and procedures of the firm to assure compliance with the provisions of this

chapter and with regulations adopted by the Board. Such audit shall be conducted at least once during each term of licensure, and the completed audit form developed by the Board, signed by the principal or supervising broker, shall be kept on the premises of the firm or sole proprietorship and shall be produced for inspection or copying upon request by an authorized agent of the Board.

2012, c. 750.

§ 54.1-2107. Certain action to constitute real estate broker or salesperson

One act for compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell or exchange real estate, or leasing, or renting, or offering to rent real estate, except as specifically excepted in § 54.1-2103, shall constitute the person, firm, partnership, copartnership, association or corporation, performing, offering or attempting to perform any of the acts enumerated above, a real estate broker or real estate salesperson.

Code 1950, § 54-732; 1984, c. 201; 1988, c. 765.

§ 54.1-2108. Protection of escrow funds, etc., held by broker

No licensee or any agent of the licensee shall divert or misuse any funds held in escrow or otherwise held by him for another. Where escrow funds or other funds are held by the licensee or his agents and the Real Estate Board or its agents have reason to believe that the licensee is not able to adequately protect the interests of persons involved, or his conduct threatens their interests, the Board shall file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies. The court may temporarily enjoin further activity by the licensee 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 the licensee. If the court finds him unable to make such payment, the Board shall determine whether the expenses and fees shall be paid from the Virginia Real Estate Transaction Recovery Fund or from funds received by the Board. Such determination shall be made within thirty days of the Board's receipt of the court-approved receiver invoices. If the court finds that the licensee was without fault and that he is found not to have violated any provisions of this chapter or of the regulations of the Board, then the receiver's expenses and fees shall be paid by the Board. Such payments shall be paid from funds received by the Board.

1973, c. 487, § 54-764.5; 1988, c. 765; 1997, c. 82; 1998, c. 29.

§ 54.1-2108.1. Protection of escrow funds, etc., held by a real estate broker in the event of foreclosure of real property; required deposits

A. Notwithstanding any other provision of law:

1. If a licensed real estate broker or an agent of the licensee is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the licensee or an agent of the licensee shall have the right to file an interpleader action pursuant to § 16.1-77.

2. If there is in effect at the date of the foreclosure sale, a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a licensee shall be paid to a party to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract and the licensee or an agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the parties.

3. If there is in effect at the date of the foreclosure sale, a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing herein shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

B. Notwithstanding any other provision of law:

1. Any prepaid rent paid more than one month prior to the rent due date to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction. Any rent paid less than one month prior to the rent due date shall be current rent and may be deposited into an operating account of the real estate licensee.

2. Any security deposits paid to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction.

3. Any application deposit as defined by § 55-248.4 paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a real estate licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord, unless otherwise agreed to in writing by the principals to a lease transaction.

4. Such funds shall remain in an escrow account until disbursed in accordance with the terms of the lease, the property management agreement, or the applicable statutory provisions, as applicable.

2010, c. 181; 2013, c. 489.

§ 54.1-2109. Death or disability of a broker

Upon the death or disability of a licensed real estate broker who was engaged in a proprietorship or who was the only licensed broker in a corporation or partnership, the Real Estate Board shall grant approval to carry on the business of the deceased or disabled broker for 180 days following the death or disability of the broker solely for the purpose of concluding the business of the deceased or disabled broker in the following order:

1. A personal representative qualified by the court to administer the deceased broker's estate.

2. If there is no personal representative qualified pursuant to subdivision 1, then an agent designated under a power of attorney of the disabled or deceased broker, which designation expressly references this section.

3. If there is no agent designated pursuant to subdivision 2, the executor nominated in the deceased broker's will.

4. If there is no executor nominated pursuant to subdivision 3, then an adult family member of the disabled or deceased broker.

5. If there is no adult family member nominated pursuant to subdivision 4, then an employee of the disabled or deceased broker.

In the event none of the foregoing is available or suitable, the Board may appoint any other suitable person to terminate the business within 180 days.

1984, c. 283, § 54-731.3; 1988, c. 765; 2014, cc. 24, 705.

§ 54.1-2110. Resident broker to maintain place of business in Virginia

Every resident real estate broker shall maintain a place of business in this Commonwealth.

Code 1950, § 54-733; 1981, c. 34; 1988, c. 765.

§ 54.1-2110.1. Duties of supervising broker

A. Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions required by this section, but such designation shall not relieve the supervising broker of responsibility for the supervision of the acts of all licensees assigned to the branch office.

B. As used in this section, "reasonable and adequate supervision" by the supervising broker shall include the following:

1. Being available to all licensees under his supervision at reasonable times to review and approve all documents, including leases, contracts, brokerage agreements, and advertising as may affect the firm's clients and business;

2. Ensuring the availability of training opportunities and that the office has written procedures and policies that provide clear guidance in the following areas:

a. Handling of escrow deposits in compliance with law and regulation;

b. Complying with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;

c. Advertising and marketing of the brokerage firm;

d. Negotiating and drafting of contracts, leases, and brokerage agreements;

e. Exercising appropriate oversight and limitations on the use of unlicensed assistants, whether as part of a team arrangement or otherwise;

f. Creating agency or independent contractor relationships and elements thereof;

g. Distributing information on new or amended laws or regulations; and

h. Disclosing required information relating to the physical condition of real property;

3. Ensuring that the brokerage services are carried out competently and in accordance with the provisions of this chapter; and

4. Maintaining the records required by this subsection for three years. The records shall be furnished to the Board's agent upon request.

C. Any supervising broker who resides more than 50 miles from a branch office under his supervision, having licensees who regularly conduct business assigned to such branch office, shall certify in writing quarterly on a form provided by the Board that the supervising broker has complied with the requirements of this section.

D. No later than January 1, 2017, the supervising broker for a branch office shall provide to the Board the name and license number of the supervising broker for the branch office. Thereafter, upon the renewal of the license of each licensee working in such branch office or upon the transfer of a licensee to such office, the broker shall provide to the Board the name and license number of each real estate licensee working in the branch office on the broker acknowledgement form created by the Board.

2012, c. 750; 2016, c. 334.

§ 54.1-2111. Consent to suits and service of process by nonresidents; manner of service

A. Every nonresident applicant shall file with the Real Estate Board an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county or city of this Commonwealth in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this Commonwealth on the Director of the Department of Professional and Occupational Regulation. The consent shall stipulate that such service of process or pleadings on the Director shall be taken and held in all

courts to be as valid and binding as if due service had been made upon the applicant in the Commonwealth of Virginia.

B. Any process or pleadings served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the licensee at the last known address.

Code 1950, §§ 54-773, 54-774; 1988, c. 765; 1993, c. 499 .

§ 54.1-2111.1. Voluntary compliance program; real estate brokers

A. The Board shall promulgate regulations to allow the audit of the practices, policies, and procedures of a real estate broker licensed by the Board, either through a third party retained by the real estate broker or through a self-audit, and if the broker is determined by such audit to not be in compliance with the provisions of this chapter or applicable regulations of the Board, to allow for the broker to enter into a voluntary compliance program to bring the broker's practices, policies, and procedures into compliance with applicable laws and regulations. The broker shall notify the Board of the discovery of any noncompliance within 30 days after discovery and shall submit a written statement with a plan to bring the practices, policies, and procedures into voluntary compliance, which completion of such voluntary compliance shall not exceed a period of 90 days from the date that the plan is submitted to the Board.

B. Certification by the broker or auditor of such broker shall constitute immunity from an enforcement action under this chapter or under the applicable regulations of the Board.

C. The provisions of this section do not apply if the noncompliance by the broker was intentional or a result of gross negligence of the broker.

2010, cc. 373, 637.

Article 2 - VIRGINIA REAL ESTATE TRANSACTION RECOVERY ACT

§ 54.1-2112. Definitions

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

"Act" means the Virginia Real Estate Transaction Recovery Act.

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § 2.2-4519, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations payable to the fund.

"Board" means the Real Estate Board.

"Claimant" means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this act.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Fund" means the Virginia Real Estate Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.

"Judgment" includes an order of a United States Bankruptcy Court (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy," (ii) extinguishing a claim against a regulant who is in bankruptcy and for which claim no distribution was made from the regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court, or (iii) extinguishing a claim against a regulant who is in bankruptcy and for which claim only partial distribution was made from the regulant's bankruptcy estate. An order of dismissal shall not be considered a judgment.

"Regulant" means a person, partnership, association, corporation, agency, firm or any other entity licensed by the Real Estate Board as a real estate broker or real estate salesperson.

"Verified claim" means a completed application, on a form designed by the Board, the truthfulness of which has been attested to by the claimant before a notary public, along with all required supporting documentation, that has been properly received by the Department in accordance with this chapter.

1977, c. 69, § 54-765.2; 1984, cc. 266, 283; 1985, c. 448; 1987, c. 555; 1988, c. 765; 1992, c. 348; 1993, c. 499; 2015, c. 409.

§ 54.1-2113. Establishment and maintenance of fund, duty of Director, assessments of regulants

A. Each initial regulant at the time of licensure shall be assessed $20, which shall be specifically assigned to the fund. Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director within 30 days.

B. All assessments, except initial assessments, for the fund shall be deposited, within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings and loan associations or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings institutions or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 64.2-1502. The Director shall maintain in his office an accurate record of all transactions involving the fund, which records shall be open for inspection and copying by the public during the normal business hours of the Director.

C. The minimum balance of the fund shall be $400,000. Whenever the Director determines that the balance of the fund is or will be less than such minimum balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a

fixed amount of interest earnings to the fund to bring the balance of the fund to the amount required by this subsection. Such transfer of interest shall be considered by the Board within 30 days of the notification of the Director.

D. If available interest earnings are insufficient to bring the balance of the fund to the minimum amount required by this section, or if a transfer of available interest earnings to the fund has not occurred, the Board shall assess each regulant within 30 days of notification by the Director, a sum sufficient to bring the balance of the fund to the required minimum amount. The Board may order an assessment of regulants at any time in addition to any required assessment. No regulant shall be assessed a total amount of more than $20 during any biennial license period or part thereof, the biennial period expiring on June 30 of each even-numbered year. Assessments of regulants made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

E. At the close of each fiscal year, whenever the balance of the fund exceeds $2 million, the amount in excess of $2 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for transfers pursuant to this subsection, there shall be no transfers out of the fund, including transfers to the general fund, regardless of the balance of the fund.

F. If the Board determines that all regulants will be assessed concurrently, notice to the regulants of such assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail to the Director within 45 days after the mailing to regulants of such notice.

If the Board determines that all regulants will be assessed in conjunction with license renewal, notice to the regulants may be included with the license renewal notice issued by the Board. The assessment shall be due with the payment of the license renewal fees. No license shall be renewed or reinstated until any outstanding assessments are paid.

G. If any regulant fails to remit the required payment mailed in accordance with subsection F within 45 days of the mailing, the Director shall notify the regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

H. The costs of administering the act shall be paid out of interest earned on deposits constituting the fund. The remainder of the interest, at the discretion of the Board, may (i) be used for providing research and education on subjects of benefit to real estate regulants or members of the public, (ii) be transferred to the Virginia Housing Trust Fund, or (iii) accrue to the fund in accordance with subsection C.

1977, c. 69, § 54-765.3; 1982, c. 6; 1984, c. 266; 1987, c. 555; 1988, c. 765; 1990, c. 3; 1992, cc. 348, 810; 1997, c. 82; 2007, c. 791; 2013, c. 754.

§ 54.1-2114. Recovery from fund generally

A. The claimant shall not himself be (i) a regulant, (ii) the personal representative of a regulant, (iii) the spouse or child of the regulant against whom the judgment was awarded or the personal representative of such spouse or child, or (iv) a lending or financial institution or any person whose business involves the construction or development of real property.

B. Whenever any person is awarded a final judgment in any court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity for improper or dishonest conduct as defined in the act, and the improper or dishonest conduct occurred during a period when the individual or entity was a regulant and occurred in connection with a transaction involving the sale, lease, or management of real property by the regulant acting in the capacity of a real estate broker or real estate salesperson and not in the capacity of a principal, or on his own account, the person to whom such judgment was awarded may file a verified claim with the Director for a directive ordering payment from the fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the complaint upon the Board by certified mail or the equivalent.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. A verified claim shall be filed with the Director no later than 12 months after the date of entry of the final judgment from which no further right of appeal exists.

4. Prior to submitting a verified claim, the claimant shall:

a. Conduct or make a reasonable attempt to conduct debtor's interrogatories to determine whether the judgment debtor has any assets, including any listings held by the regulant and any commissions due thereby; and

b. Take all legally available actions for the sale or application of any assets disclosed in the debtor's interrogatories.

5. If the judgment debtor has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, or the distribution ordered fails to satisfy the claim, the claimant may then file a claim with the Board. The verified claim shall be received by the Board within 12 months of the date of bankruptcy discharge or dismissal. In the event the judgment is silent as to the conduct of the regulant, the Board shall determine (i) whether the conduct of the regulant that gave rise to the claim was improper or dishonest as defined in § 54.1-2112 and (ii) what amount, if any, such claimant is entitled to recover from the Fund.

C. The Department shall promptly consider the verified claim. If it appears that a prima facie case has been made for payment of the claim, the Department shall provide the regulant with a notice offering the opportunity to be heard at an informal fact-finding conference pursuant to § 2.2-4019

of the Administrative Process Act (§ 2.2-4000 et seq.). Such notice shall state that if the regulant does not request an informal fact-finding conference within 30 days, with three days added in instances where the notice is sent by mail, the Department shall present the claim to the Board with a recommendation to pay the verified claim.

D. A claimant shall not be denied recovery from the Fund due to the fact that the order for judgment filed with the verified claim does not contain a specific finding of improper or dishonest conduct. Any language in the order that supports the conclusion that the court found that the conduct of the regulant meets the definition of improper or dishonest conduct in § 54.1-2112 shall be used by the Board to determine eligibility for recovery from the Fund. To the extent the judgment order is silent as to the court's findings on the conduct of the regulant, the Board may determine whether the conduct of the regulant meets the definition of improper or dishonest conduct by substantial evidence in the verified claim.

E. If the Board finds that there has been compliance with the statutory conditions to which reference is made in this section, the Board shall issue a directive ordering payment to the claimant from the fund the amount unpaid on the judgment, subject to the limitations set forth in § 54.1-2116. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

1977, c. 69, § 54-765.4; 1984, c. 266; 1987, c. 555; 1988, c. 765; 1996, c. 115; 2006, c. 723; 2015, c. 409.

§ 54.1-2115. Investigations

Upon receipt of the notice of proceedings against the regulant, the Department may cause its own investigation to be conducted pursuant to § 54.1-306.

1987, c. 555, § 54-765.4:1; 1988, c. 765; 2015, c. 409.

§ 54.1-2116. Limitations upon recovery from fund; certain actions not a bar to recovery

A. The aggregate of claims by claimants against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, is limited to $50,000. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund arising out of the same transaction, the Board may withhold any payment (s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims arising out of the same transaction exceeds $50,000, such $50,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

B. The maximum claim of one claimant against the fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, shall be limited to $20,000, regardless of the number of claimants and regardless of the amount of the unpaid judgment of the claimant.

C. The aggregate of claims against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with more than a single transaction involving the sale, lease, or management of real property is limited to $100,000 during any biennial license period, the biennial periods expiring on June 30 of each even-numbered year. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the fund involving such regulant for a period of not more than one year. After the one-year period, if the aggregate of claims against the regulant exceeds $100,000, such $100,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

D. Excluded from the amount of any unpaid judgment upon which a claim against the fund is based shall be any sums included in the judgment which represent interest, or punitive damages. The claim against the fund may include court costs and attorney fees.

E. If, at any time, the amount of the fund is insufficient to satisfy any claims, claim, or portion thereof filed with the Board and authorized by the act, the Board shall, when the amount of the fund is sufficient to satisfy some or all of such claims, claim, or portion thereof, pay the claimants in the order that such claims were filed with the Board.

F. Failure of a claimant to comply with the provisions of subdivisions B 1 and 2 of § 54.1-2114 and the provisions of § 54.1-2117 shall not be a bar to recovery under this act if the claimant is otherwise entitled to such recovery.

1977, c. 69, § 54-765.5; 1987, c. 555; 1988, c. 765; 2015, cc. 409, 710.

§ 54.1-2117. Participation by Board in proceedings

Upon service of the complaint as provided in subdivision B 1 of § 54.1-2114, the Board, the Director, or duly authorized representatives of the Board shall then have the right to request leave of court to intervene.

1977, c. 69, § 54-765.6; 1987, c. 555; 1988, c. 765; 2015, c. 409.

§ 54.1-2118. Payment of claim; assignment of claimant's rights to Board

The Director shall, subject to the provisions of § 54.1-2116, pay to the claimant from the fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights against the regulant to the extent that such rights were satisfied from the fund.

1977, c. 69, § 54-765.7; 1987, c. 555; 1988, c. 765.

§ 54.1-2119. Revocation of license of regulant upon payment from fund

Upon payment by the Director to a claimant from the fund as provided in § 54.1-2118, the Board shall immediately revoke the license of the regulant whose improper or dishonest conduct, as defined in the act, resulted in payment from the fund. The regulant whose license was so revoked shall not be eligible to apply for a license as a real estate broker or real estate salesperson until he has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment from the fund.

1977, c. 69, § 54-765.8; 1984, c. 266; 1987, c. 555; 1988, c. 765.

§ 54.1-2120. No waiver by Board of disciplinary action against regulant

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any regulant for any violation of this chapter or Board regulations, nor shall the repayment in full by a regulant of the amount paid from the fund on such regulant's account nullify or modify the effect of any disciplinary proceeding against such regulant for any such violation.

1977, c. 69, § 54-765.9; 1978, c. 129; 1987, c. 555; 1988, c. 765.

Article 3 - DUTIES OF REAL ESTATE BROKERS AND SALESPERSONS

§ 54.1-2130. Definitions

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person as an agent by such person's express authority in a commercial or residential real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135. Any real estate licensee who acts for or represents a client in an agency relationship in a residential real estate transaction shall either represent such client as a standard agent or a limited service agent.

"Agent" means a real estate licensee who is acting as (i) a standard agent in a residential real estate transaction, (ii) a limited service agent in a residential real estate transaction, or (iii) an agent in a commercial real estate transaction.

"Brokerage agreement" means the written agreement creating a brokerage relationship between a client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent the client as an agent or an independent contractor.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

"Client" means a person who has entered into a brokerage relationship with a licensee.

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under § 58.1-3230. Commercial real estate shall not include single family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee rather than a client.

"Designated agent" or "designated representative" means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction. A designated representative shall only act as an independent contractor.

"Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an agency relationship under brokerage agreements with the clients. A dual representative has an independent contractor relationship under brokerage agreements with the clients. A dual representative shall only act as an independent contractor.

"Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship based upon a brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent; (ii) shall have the obligations agreed to by the

parties in the brokerage agreement; and (iii) shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135.

"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.).

"Limited service agent" means a licensee who acts for or represents a client in a residential real estate transaction pursuant to a brokerage agreement that provides that the limited service agent will not provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service agent shall have the obligations set out in the brokerage agreement, except that a limited service agent shall provide the client, at the time of entering the brokerage agreement, copies of any and all disclosures required by federal or state law, or local disclosures expressly authorized by state law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client under the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the condominium resale certificate required by § 55-79.97; and (iii) if the client is selling a property subject to the Property Owners' Association Act (§ 55-508 et seq.), the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet required by § 55-509.5.

"Ministerial acts" means those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment.

"Property management agreement" means the written agreement between a property manager and the owner of real estate for the management of the real estate.

"Residential real estate" means real property containing from one to four residential dwelling units and the sale of lots containing one to four residential dwelling units.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship in a residential real estate transaction. A standard agent shall have the obligations as provided in this article and any additional obligations agreed to by the parties in the brokerage agreement.

1995, cc. 741, 813; 2006, c. 627; 2008, cc. 851, 871; 2011, c. 461; 2012, c. 750; 2016, c. 334.

§ 54.1-2131. Licensees engaged by sellers

A. A licensee engaged by a seller shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the seller by:

a. Conducting marketing activities on behalf of the seller in accordance with the brokerage agreement. In so doing, the licensee shall seek a sale at the price and terms agreed upon in the brokerage agreement or at a price and terms acceptable to the seller; however, the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless agreed to as part of the brokerage agreement or as the contract of sale so provides;

b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the seller's objectives;

c. Receiving and presenting in a timely manner written offers and counteroffers to and from the seller and purchasers, even when the property is already subject to a contract of sale; and

d. Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to facilitate settlement of the purchase contract;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the seller consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the seller has or may have an interest;

6. Disclose to the seller material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, all fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, or (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. No cause of action shall arise against any licensee for revealing

information as required by this article or applicable law. Nothing in this article shall limit in any way the provisions of the Virginia Residential Property Disclosure Act (§ 55-517 et seq.) applicable to residential real estate transactions.

C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to a buyer or potential buyer by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage agreement with the seller unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such buyer or potential buyer.

D. A licensee engaged by a seller does not breach any duty or obligation owed to the seller by showing alternative properties to prospective buyers, whether as clients or customers, or by representing other sellers who have other properties for sale.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a nonattorney settlement agent.

1995, cc. 741, 813; 2006, c. 627; 2008, c. 741; 2011, cc. 34, 46, 461; 2012, c. 750; 2016, c. 334.

§ 54.1-2132. Licensees engaged by buyers

A. A licensee engaged by a buyer shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the buyer by:

a. Seeking a property of a type acceptable to the buyer and at a price and on terms acceptable to the buyer; however, the licensee shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the brokerage relationship;

b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the buyer's objectives;

c. Receiving and presenting in a timely manner all written offers or counteroffers to and from the buyer and seller, even when the buyer is already a party to a contract to purchase property; and

d. Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate settlement of the purchase contract;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the

brokerage relationship be maintained confidential unless otherwise provided by law or the buyer consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the buyer has or may have an interest;

6. Disclose to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, all fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false information. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. In the case of a residential transaction, a licensee engaged by a buyer shall disclose to a seller whether or not the buyer intends to occupy the property as a principal residence. The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.

C. A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to the seller, or prospective seller, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage agreement with the buyer unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such seller.

D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing properties in which the buyer is interested to other prospective buyers, whether as clients or customers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a nonattorney settlement agent.

G. Notwithstanding any other provision of law requiring written brokerage agreements or governing the duties of licensees, nothing in this chapter shall be construed to require that a written agreement between a licensee and a prospective buyer be executed prior to the licensee's showing properties to the prospective buyer.

1995, cc. 741, 813; 2006, c. 627; 2011, cc. 34, 46; 2012, c. 750; 2016, c. 334.

§ 54.1-2133. Licensees engaged by landlords to lease property

A. A licensee engaged by a landlord shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the landlord by:

a. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement with the landlord. In so doing, the licensee shall seek a tenant at the rent and terms agreed in the brokerage agreement or at a rent and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;

b. Assisting the landlord in drafting and negotiating leases and letters of intent to lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord and tenant pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the landlord to finalize the lease agreement;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the landlord consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the landlord has or may have an interest;

6. Disclose to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false information. A licensee engaged by a landlord shall disclose to prospective tenants all material

adverse facts pertaining to the physical condition of the property which are actually known by the licensee. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property.

C. A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.

D. A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

1995, cc. 741, 813; 2006, c. 627; 2008, c. 741; 2011, cc. 34, 46, 461; 2012, c. 750; 2016, c. 334.

§ 54.1-2134. Licensees engaged by tenants

A. A licensee engaged by a tenant shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the tenant by:

a. Seeking a lease at a rent and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;

b. Assisting in the drafting and negotiating of leases, letters of intent to lease, and rental applications, and presenting, in a timely fashion, all written offers or counteroffers to and from the tenant and landlord pursuant to § 54.1-2101.1, even when the tenant is already a party to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the tenant to finalize the lease agreement;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the tenant consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the tenant has or may have an interest;

6. Disclose to the tenant material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false information. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law.

C. A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord or prospective landlord by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the tenant unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with the landlord or prospective landlord.

D. A licensee engaged by a tenant does not breach any duty or obligation to the tenant by showing properties in which the tenant is interested to other prospective tenants, whether as clients or customers, by representing other tenants looking for the same or other properties to lease, or by representing landlords relative to other properties.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Notwithstanding any other provision of law requiring written brokerage agreements or governing the duties of licensees, nothing in this chapter shall be construed to require that a written agreement between a licensee and a prospective tenant be executed prior to the licensee's showing properties to the prospective tenant.

1995, cc. 741, 813; 2006, c. 627; 2011, cc. 34, 46; 2012, c. 750; 2016, c. 334.

§ 54.1-2135. Licensees engaged to manage real estate

A. A licensee engaged to manage real estate shall:

1. Perform in accordance with the terms of the property management agreement;

2. Exercise ordinary care;

3. Disclose in a timely manner to the owner material facts of which the licensee has actual knowledge concerning the property;

4. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the owner consents in writing to the release of such information;

5. Account for, in a timely manner, all money and property received in which the owner has or may have an interest; and

6. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Except as provided in the property management agreement, a licensee engaged to manage real estate does not breach any duty or obligation to the owner by representing other owners in the management of other properties.

C. A licensee may also represent the owner as seller or landlord if they enter into a brokerage relationship that so provides; in which case, the licensee shall disclose such brokerage relationships pursuant to the provisions of this article.

D. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the owner. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

E. Property management agreements in residential real estate transactions shall be in writing and shall:

1. Have a definite termination date or duration; however, if a property management agreement does not specify a definite termination date or duration, the agreement shall terminate 90 days after the date of the agreement;

2. State the amount of the management fees and how and when such fees are to be paid;

3. State the services to be rendered by the licensee; and

4. Include such other terms as have been agreed to by the owner and the property manager.

F. The provisions of this section shall not apply to licensees engaged in commercial real estate transactions.

1995, cc. 741, 813; 2011, cc. 34, 46, 461; 2016, c. 334.

§ 54.1-2136. Preconditions to brokerage relationship

Prior to entering into any brokerage relationship provided for in this article, a licensee shall advise the prospective client of (i) the type of brokerage relationship proposed by the broker and (ii) the broker's compensation and whether the broker will share such salary or compensation with another broker who may have a brokerage relationship with another party to the transaction.

1995, cc. 741, 813.

§ 54.1-2137. Commencement and termination of brokerage relationships

A. The brokerage relationships set forth in this article shall commence at the time that a client engages a licensee and shall continue until (i) completion of performance in accordance with the brokerage agreement or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage agreement or in any amendments thereto, (b) any mutually agreed upon termination of the brokerage agreement, (c) a default by any party under the terms of the brokerage agreement, or (d) a termination as set forth in subsection F of § 54.1-2139.

B. Brokerage agreements shall be in writing and shall:

1. Have a definite termination date; however, if a brokerage agreement does not specify a definite termination date, the brokerage agreement shall terminate 90 days after the date of the brokerage agreement;

2. State the amount of the brokerage fees and how and when such fees are to be paid;

3. State the services to be rendered by the licensee;

4. Include such other terms of the brokerage relationship as have been agreed to by the client and the licensee; and

5. In the case of brokerage agreements entered into in conjunction with the client's consent to a dual representation, the disclosures set out in subsection A of § 54.1-2139.

C. Except as otherwise agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of performance of the brokerage agreement, except to (i) account for all moneys and property relating to the brokerage relationship and (ii) keep confidential all personal and financial information received from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information.

1995, cc. 741, 813; 2011, c. 461; 2012, c. 750.

§ 54.1-2138. Disclosure of brokerage relationship in residential real estate transactions

A. Upon having a substantive discussion about a specific property or properties in a residential real estate transaction with an actual or prospective buyer or seller who is not the client of the

licensee and who is not represented by another licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction. Further, except as provided in § 54.1-2139 or 54.1-2139.1, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF BROKERAGE RELATIONSHIP IN A RESIDENTIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:

The licensee ..... (name of broker or salesperson)

associated with .....

(Name of Brokerage Firm)

represents the following party in a residential real estate transaction:

..... Seller(s)or
..... Buyer(s)

..... Landlord(s) -13m or
..... Tenant(s)

.....
.....

DateName

.....
.....

DateName

B. A licensee shall disclose to an actual or prospective landlord or tenant, who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in all applications for lease or in the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, disclosure shall be made in writing no later than the signing of the lease. Such disclosure requirement shall not apply to lessors or lessees in single or multifamily residential units for lease terms of less than two months.

C. If a licensee's relationship to a client or customer changes, the licensee shall disclose that fact in writing to all clients and customers already involved in the specific contemplated transaction.

D. Copies of any disclosures relative to fully executed purchase contracts shall be kept by the licensee for a period of three years as proof of having made such disclosure, whether or not such disclosure is acknowledged in writing by the party to whom such disclosure was shown or given.

E. A limited service agent shall also make the disclosure required by § 54.1-2138.1.

1995, cc. 741, 813; 1997, cc. 86, 119; 2006, c. 627; 2012, c. 750; 2016, c. 334.

§ 54.1-2138.1. Limited service agent in a residential real estate transaction, contract disclosure required

A. A licensee may act as a limited service agent in a residential real estate transaction only pursuant to a written brokerage agreement in which the limited service agent (i) discloses that the licensee is acting as a limited service agent; (ii) provides a list of the specific services that the licensee will provide to the client; and (iii) provides a list of the specific duties of a standard agent set out in subdivision A 2 of § 54.1-2131, subdivision A 2 of § 54.1-2132, subdivision A 2 of § 54.1-2133, or subdivision A 2 of § 54.1-2134, as applicable, that the limited service agent will not provide to the client. Such disclosure shall be conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate box. In addition, a disclosure that contains language that complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

"By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service agent in a residential real estate transaction by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service agent."

A limited service agent shall disclose dual agency in accordance with § 54.1-2139.

B. A licensee engaged by one client to a residential real estate transaction and dealing with an unrepresented party or with a party represented by a limited service agent and who, without additional compensation, provides such other party information relative to the transaction or undertakes to assist such other party in securing a contract or with such party's obligations thereunder, shall not incur liability for such actions except in the case of gross negligence or willful misconduct. A licensee does not create a brokerage relationship by providing such assistance or information to the other party to the transaction. A licensee dealing with a client of a limited service agent may enter into an agreement with that party for payment of a fee for services performed or information provided by that licensee. Such payment shall not create a brokerage relationship; however, the licensee providing such services or information for a fee shall be held to the ordinary standard of care in the provision of such services or information.

2006, c. 627; 2012, c. 750; 2016, c. 334.

§ 54.1-2139. Disclosed dual agency and dual representation authorized in a residential real estate transaction

A. A licensee may not act as a dual agent or dual representative in a residential real estate transaction unless he has first obtained the written consent of all parties to the transaction given after written disclosure of the consequences of such dual agency or dual representation. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such disclosure shall be in writing and given to both parties prior to the commencement of such dual agency or dual representation.

B. If the licensee is currently representing a party as an agent or independent contractor representative and that party desires to engage in a real estate transaction with another existing client represented by the licensee, the licensee may engage in dual representation provided that prior to commencement thereof the disclosure required by this section is given to both of the licensee's existing clients.

C. If the licensee is currently representing a party as an agent or independent contractor representative and the licensee proposes to represent a new client in a dual representation, the licensee may only engage in such dual representation if prior to commencement thereof, the disclosure required by this section is given to the licensee's one existing client and one new client.

D. Such disclosures shall not be deemed to comply with the requirements in this section if (i) not signed by the client or (ii) given in a purchase agreement, lease, or any other document related to a transaction. However, such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as required in this section.

E. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

F. No cause of action shall arise against a dual agent or dual representative for making disclosures of brokerage relationships as provided by this article. A dual agent or dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual agency or dual representation.

G. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual agency or dual representation hereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction nor to limit the licensee from representing the client who refused the dual agency or dual representation in other transactions not involving the dual agency or dual representation.

H. The dual agency or dual representation disclosure in a residential transaction shall contain the following provisions and disclosure that substantially complies with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION IN A RESIDENTIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:

The licensee _____ (name of broker or salesperson) associated with _____ __ (Brokerage Firm) represents more than one party in this residential real estate transaction as follows:

A. Brokerage Firm represents the following party (select one):

[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):

[ ] standard agent [ ] limited service agent [ ] independent contractor

Brokerage Firm represents another party (select one):

[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):

[ ] standard agent [ ] limited service agent [ ] independent contractor

B. Brokerage Firm disclosure and client acknowledgement of the following (select one):

[ ] Brokerage Firm represents two existing clients in the transaction and the undersigned acknowledge the following:

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

[ ] Brokerage Firm represents one existing client and one new client in the transaction and the undersigned acknowledge the following:

The undersigned understand:

1. That following the commencement of dual agency or representation, the licensee cannot advise either party as to the terms to offer or accept in any offer or counteroffer; however, the licensee may have advised one party as to such terms prior to the commencement of dual agency or representation;

2. That the licensee cannot advise the buyer client as to the suitability of the property, its condition (other than to make any disclosures as required by law of any licensee representing a seller), and cannot advise either party as to what repairs of the property to make or request;

3. That the licensee cannot advise either party in any dispute that arises relating to the transaction;

4. That the licensee may be acting without knowledge of the client's needs, client's knowledge of the market, or client's capabilities in dealing with the intricacies of real estate transactions; and

5. That either party may engage another licensee at additional cost to represent their respective interests.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

_____	_____
Date	Name (One Party)
_____	_____
Date	Name (One Party)
_____	_____
Date	Name (One Party)
_____	_____
Date	Name (One Party)

1995, cc. 741, 813; 2011, c. 461; 2012, c. 750.

§ 54.1-2139.01. Disclosed dual agency and dual representation in commercial real estate transactions authorized

A. A licensee may act as a dual agent or dual representative in a commercial real estate transaction only with the written consent of all clients to the transaction. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as provided in this section.

B. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure shall be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION IN A COMMERCIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:
The licensee.....
(name of broker or salesperson)

associated with.....
(Brokerage Firm)
represents more than one party in this commercial real estate transaction as follows:
Brokerage Firm represents the following party (select one):
[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)
As a (select one):
[ ] agent [ ] independent contractor
Brokerage Firm represents another party (select one):
[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)
As a (select one):
[ ] agent [ ] independent contractor

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.
.....
.....
DateName (One Party)
.....
.....
DateName (One Party)
.....
.....
DateName (Other Party)
.....
.....
DateName (Other Party)

C. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

D. No cause of action shall arise against a dual representative for making disclosures of brokerage relationships as provided by this article. A dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual representation.

E. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual representation thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or to limit the licensee from representing the client who refused the dual representation in other transactions not involving dual representation.

2012, c. 750; 2016, c. 334.

§ 54.1-2139.1. Designated standard agency or designated representation authorized in a residential real estate transaction

A. A principal or supervising broker may assign different licensees affiliated with the broker as designated agent or representative to represent different clients in the same residential real estate transaction to the exclusion of all other licensees in the firm. Use of such designated agents or representatives shall not constitute dual agency or representation if a designated agent or representative is not representing more than one client in a particular real estate transaction; however, the principal or broker who is supervising the transaction shall be considered a dual agent or representative as provided in this article. Designated agents or representatives may not disclose, except to the affiliated licensee's broker, personal or financial information received from the clients during the brokerage relationship and any other information that the client requests during the brokerage relationship be kept confidential, unless otherwise provided for by law or the client consents in writing to the release of such information.

B. Use of designated agents or representatives in a residential real estate transaction shall be disclosed in accordance with the provisions of this article. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure shall be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure that complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

DISCLOSURE OF DESIGNATED AGENTS OR REPRESENTATIVES IN A RESIDENTIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:

The licensee.....
(Name of Broker and Firm)
represents more than one party in this residential real estate transaction as indicated below:

..... Seller(s) and Buyer(s)

..... Landlord(s) and Tenant(s).

The undersigned understand that the foregoing dual agent or representative may not disclose to either client or such client's designated agent or representative any information that has been given to the dual agent or

representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The principal or supervising broker has assigned
.....to act as Designated Agent or Representative
(broker or salesperson)
for the one party as indicated below:
[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)
As a (select one):
[ ] standard agent [ ] limited service agent [ ] independent contractor
..... to act as Designated Agent or Representative
(broker or salesperson)
for the other party as indicated below:
[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):
[ ] standard agent [ ] limited service agent [ ] independent contractor

The undersigned by signing this notice do hereby acknowledge their consent to the disclosed dual representation by the licensee.
.....
.....
DateName (One Party)
.....
.....
DateName (One Party)
.....
.....
DateName (Other Party)
.....
.....
DateName (Other Party)

C. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

D. No cause of action shall arise against a designated agent or representative for making disclosures of brokerage relationships as provided by this article. A designated agent or representative

does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual representation.

E. In any residential real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed designated agency or representation agreement thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or to limit the licensee from representing the client who refused the designated agency or representation relationship in other transactions not involving designated representation.

2011, c. 461; 2012, c. 750; 2016, c. 334.

§§ 54.1-2139.2, 54.1-2139.3. Repealed

Repealed by Acts 2012, c. 750, cl. 2.

§ 54.1-2140. Compensation shall not imply brokerage relationship

The payment or promise of payment or compensation to a real estate broker does not create a brokerage relationship between any broker, seller, landlord, buyer or tenant.

1995, cc. 741, 813.

§ 54.1-2141. Brokerage relationship not created by using common source information company

No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord or other licensee solely by reason of using a common source information company. However, nothing contained in this article shall be construed to prevent a common source information company from requiring, as a condition of participation in or use of such common source information, that licensees providing information through such company disclose the nature of the brokerage relationship with the client, including, but not limited to, whether the licensee is acting as (i) an independent contractor, (ii) a limited service agent, (iii) a standard agent, or (iv) an agent as provided in the brokerage agreement. A common source information company may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt rules providing that absent any disclosure, a licensee providing information through such company may be assumed to be acting as a standard agent. A common source information company shall have the right, but not the obligation, to make information about the nature of brokerage relationships available to its participants and to settlement service it provides including, without limitation, title insurance companies, lenders, and settlement agents.

1995, cc. 741, 813; 2006, c. 627; 2012, c. 750; 2016, c. 334.

§ 54.1-2142. Liability; knowledge not to be imputed

A. A client is not liable for (i) a misrepresentation made by a licensee in connection with a brokerage relationship, unless the client knew or should have known of the misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or (ii) the negligence, gross negligence or intentional acts of any broker or broker's licensee.

B. A broker who has a brokerage relationship with a client and who engages another broker to assist in providing brokerage services to such client shall not be liable for (i) a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or (ii) the negligence, gross negligence or intentional acts of the assisting broker or assisting broker's licensee.

C. Clients and licensees shall be deemed to possess actual knowledge and information only. Knowledge or information among or between clients and licensees shall not be imputed.

D. Nothing in this article shall limit the liability between or among clients and licensees in all matters involving unlawful discriminatory housing practices.

E. Except as expressly set forth in this section, nothing in this article shall affect a person's right to rescind a real estate transaction or limit the liability of (i) a client for the misrepresentation, negligence, gross negligence or intentional acts of such client in connection with a real estate transaction, or (ii) a licensee for the misrepresentation, negligence, gross negligence or intentional acts of such licensee in connection with a real estate transaction. However, nothing in this article shall create a civil cause of action against a licensee.

1995, cc. 741, 813; 2016, c. 334.

§ 54.1-2142.1. Liability for false information

A licensee shall not be liable for providing false information if the information was (i) provided to the licensee by the licensee's client; (ii) obtained from a governmental entity; (iii) obtained from a nongovernmental person or entity that obtained the information from a governmental entity; or (iv) obtained from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (a) have actual knowledge that the information was false or (b) act in reckless disregard of the truth. This includes any regulatory action brought under this chapter and any civil actions filed. However, nothing in this article shall create a civil cause of action against a licensee.

2011, c. 461; 2013, c. 499; 2016, c. 334.

§ 54.1-2143. Real estate board regulations to be consistent

Any regulations adopted by the Virginia Real Estate Board shall be consistent with this article, and any such regulations existing as of the effective date of this article shall be modified to comply with the provisions of this article.

1995, cc. 741, 813.

§ 54.1-2144. Common law abrogated

The common law of agency relative to brokerage relationships in real estate transactions to the extent inconsistent with this article shall be expressly abrogated.

1995, cc. 741, 813.

§ 54.1-2145. Article does not limit antitrust laws

Nothing in this article shall be construed to limit, modify, impair, or supercede the applicability of any federal or state antitrust laws.

2006, c. 627.

§ 54.1-2146. Licensee maintenance of records

Any document or record required to be maintained by a licensee under this chapter may be an electronic record in accordance with the Uniform Electronic Transactions Act (§ 59.1-479 et seq.).

2011, c. 461.

Chapter 22 - SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Article 1 - GENERAL PROVISIONS

§ 54.1-2200. Definitions

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

"Board" means the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

"Department" means the Department of Professional and Occupational Regulation.

"Eligible soil scientist" means a person who possesses the qualifications specified in this chapter to become licensed.

"Eligible wetland professional" means a person who possesses the qualifications specified in this chapter to become certified.

"Geologist" means a person engaged in the public practice of geology.

"Geology" means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases, and other natural materials.

"Practice of geology" means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

"Practice of wetland delineation" means the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, veget-

ation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings.

"Qualified geologist" means an uncertified person who possesses all the qualifications specified in this chapter for certification.

"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.

"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.

"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.

"Soil scientist" means a person having special knowledge of soil science and the methods and principles of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.

"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the Board through certification.

"Virginia certified professional wetland delineator" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who is granted certification by the Board.

"Virginia licensed professional soil scientist" means a person who possesses the qualifications required for licensure by the provisions of this chapter and the regulations of the Board and who has been granted a license by the Board.

"Wetland delineation" means delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types.

"Wetland professional" means a person having special knowledge of wetland science and the methods and principles of wetland delineation as acquired by education and experience in the formation, description and mapping of wetlands.

"Wetland science" means the science dealing with the physical, chemical, and biological properties of wetland systems integrated through ecological and morphological relationships.

"Wetlands" means the same as that term is defined in §§ 28.2-1300 and 62.1-44.3.

1987, c. 626, § 54-969; 1988, c. 765; 1993, c. 499; 2002, c. 784; 2011, cc. 777, 859; 2012, cc. 803, 835.

§ 54.1-2200.1. Expired

Expired.

§ 54.1-2200.2. Board for Professional Soil Scientists, Wetland Professionals, and Geologists; membership; quorum

A. Notwithstanding the provisions of § 54.1-200, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists shall be composed of 13 members as follows: three licensed professional soil scientists, three certified professional wetland delineators, three geologists, and three citizen members. The State Geologist shall serve as an ex officio member of the Board. The geologist members shall be of varied backgrounds. The professional soil scientist members shall have experience in at least one of the following areas: (i) soil mapping and classification, (ii) soil suitability and land use, (iii) teaching and research in soil science, and (iv) environmental protection regulations. Of the wetland professional members, one shall have experience in wetland delineation and description, one shall have experience in teaching and research in wetland science, and one shall have experience with natural resource regulations. Terms of the members shall be for four years.

B. The Board shall annually elect a chairman from its membership. Seven board members, consisting of at least two soil scientists, two professional wetland delineators, two geologists, and one citizen, shall constitute a quorum.

C. The Governor may select the professional soil scientist members from a list of at least three names for each vacancy submitted by the Virginia Association of Professional Soil Scientists. The Governor may notify the Virginia Association of Professional Soil Scientists of any professional vacancy other than by expiration among the professional soil scientist members of the Board and nominations may be made for the filling of the vacancy.

D. The Governor may select the wetland professionals from a list of at least three names for each vacancy submitted by the Virginia Association of Wetland Professionals. The Governor may notify and request nominations from the Virginia Association of Wetland Professionals of any professional vacancy other than by expiration among the wetland professional members.

2012, cc. 803, 835.

Article 2 - SOIL SCIENTISTS AND WETLAND PROFESSIONALS

§ 54.1-2201. Exceptions

A. The certification program for wetland delineation set forth in this chapter shall be voluntary and shall not be construed to prohibit:

1. The practice of wetland delineation by individuals who are not certified professional wetland delineators as defined in this chapter;

2. The work of an employee or a subordinate of a certified professional wetland delineator or of an individual who is practicing wetland delineation without being certified;

3. The work of any professional engineer, landscape architect, or land surveyor as defined by § 54.1-400 in rendering any of the services that constitute the practice of wetland delineation or the practice of soil evaluation; or

4. The practice of any profession or occupation that is regulated by another regulatory board within the Department.

B. The licensing program for professional soil scientists shall not be construed to prohibit:

1. The work of an employee or a subordinate of a licensed soil scientist;

2. The work of any professional engineer, landscape architect, or land surveyor as defined in § 54.1-400 in rendering any services that constitute the practice of soil evaluation; or

3. The practice of any profession or occupation that is regulated by another regulatory board within the Department.

C. Nothing in this chapter shall authorize an individual to engage in the practice of engineering, the practice of land surveying or the practice of landscape architecture, unless such individual is licensed or certified pursuant to Chapter 4 (§ 54.1-400 et seq.).

1987, c. 626, § 54-970; 1988, c. 765; 1993, c. 499; 2002, c. 784; 2009, c. 309; 2011, cc. 777, 859.

§ 54.1-2202. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 39.

§ 54.1-2203. Certification as wetland delineator

A. Any person practicing or offering to practice as a wetland professional in the Commonwealth may submit to the Board evidence of qualification to be a certified professional wetland delineator as provided in this chapter. The Board may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.

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

1987, c. 626, § 54-973; 1988, c. 765; 2002, c. 784; 2011, cc. 777, 859.

§ 54.1-2204. Repealed

Repealed by Acts 2011, cc. 777 and 859, cl. 3, effective July 1, 2013.

§ 54.1-2205. License required; application; requirements for licensure; continuing education

A. No person shall engage in, or offer to engage in, the practice of soil evaluation in the Commonwealth unless he has been licensed under the provisions of this chapter.

B. In order to be licensed as a professional soil scientist, an applicant shall:

1. Submit satisfactory evidence verified by affidavits that the applicant:

a. Is 18 years of age or older;

b. Is of good moral character; and

c. Has successfully completed such educational and experiential requirements as are required by this chapter and the regulations of the Board.

2. Achieve a score acceptable to the Board on an examination in the principles and practice of soil evaluation and satisfy one of the following criteria:

a. Hold a bachelor's degree from an accredited institution of higher education in a soils curriculum which has been approved by the Board and have at least four years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or

b. Hold a bachelor's degree in one of the natural sciences and have at least five years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or

c. Have a record of at least eight years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or

d. Have at least four years of experience in soil science research or as a teacher of soils curriculum in an accredited institution of higher education which offers an approved four-year program in soils and at least two years of soil evaluation experience, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist.

C. The Board shall establish by regulation requirements for continuing education as a prerequisite to the maintenance and renewal of a license issued under this chapter, not to exceed eight contact hours per year.

D. Individuals applying for a license as a professional soil scientist between July 1, 2013, and July 1, 2015, who (i) have been certified as professional soil scientists by the Board or (ii) have achieved a score set by the Board on the examination required by this section shall be licensed by the Board if all other requirements of this chapter or Board regulations have been met, unless an applicant is found by the Board to have engaged in any act that would constitute grounds for disciplinary action.

1987, c. 626, § 54-975; 1988, c. 765; 1991, c. 181; 2011, cc. 777, 859.

§ 54.1-2206. Waiver of examination

A. The Board may waive the requirement for examination pursuant to § 54.1-2205 upon written application from an individual who holds an unexpired certificate or license, or its equivalent, issued by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body which could result in

the suspension or revocation of his certificate or license, if such other state, territory or possession recognizes the license issued by the Board.

B. The Board shall waive the requirement for examination pursuant to § 54.1-2206.2 upon the written application from an individual who holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States or has been provisionally certified under the U.S. Army Corps of Engineers Wetland Delineator Certification Program of 1993 and is not the subject of any disciplinary proceeding before such regulatory body, which could result in the suspension or revocation of his certificate.

1987, c. 626, § 54-976; 1988, c. 765; 1991, c. 181; 2002, c. 784; 2003, c. 447; 2010, c. 91; 2011, cc. 777, 859.

§ 54.1-2206.1. Requirements for application for professional wetland delineator certification

The Board may certify any applicant as a Virginia certified professional wetland delineator who has submitted satisfactory evidence verified by affidavits that the applicant:

1. Is eighteen years of age or older;

2. Is of good moral character; and

3. Has successfully completed such educational and experiential requirements as are required by this chapter and the regulations of the Board.

2002, c. 784.

§ 54.1-2206.2. Requirements for professional wetland delineator certification

In order to be certified as a professional wetland delineator, an applicant shall achieve a score acceptable to the Board on an examination, which may include a field practicum, in the principles and practice of wetland delineation, provide three written references from wetland professionals with at least one from a certified professional wetland delineator, and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, biological engineering, civil and environmental engineering, ecology, soil science, geology, hydrology or any similar biological, physical, natural science or environmental engineering curriculum that has been approved by the Board; have successfully completed a course of instruction, in state and federal wetland delineation methods, that has been approved by the Board; and have at least four years of experience in wetland delineation, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator;

2. Have a record of at least six years of experience in wetland delineation, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator; or

3. Have a record of at least four years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator.

2002, c. 784; 2007, c. 334; 2013, c. 546.

§ 54.1-2207. Unprofessional conduct

Any professional soil scientist who is licensed or any wetland delineator who is certified, as provided in this chapter, shall be considered guilty of unprofessional conduct and subject to disciplinary action by the Board, if he:

1. Obtains his certification or license through fraud or deceit;

2. Violates or cooperates with others in violating any provision of this chapter, the Code of Professional Ethics and Conduct or any regulation of the Board;

3. Performs any act likely to deceive, defraud or harm the public;

4. Demonstrates gross negligence, incompetence or misconduct in the practice of soil evaluation or wetland delineation; or

5. Is convicted of a felony.

1987, c. 626; 1988, c. 765; 2002, c. 784; 2011, cc. 777, 859.

§ 54.1-2208. Unlawful representation as a licensed professional soil scientist or certified wetland delineator

A. No person shall represent himself as a licensed professional soil scientist unless he has been so licensed by the Board. Any person practicing or offering to practice soil evaluation within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a licensed professional soil scientist without holding a license from the Board shall be guilty of a Class 1 misdemeanor.

B. No person shall represent himself as a certified professional wetland delineator unless he has been so certified by the Board. Any person practicing or offering to practice wetland delineation within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified professional wetland delineator without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.

1987, c. 626, § 54-971; 1988, c. 765; 2002, c. 784; 2011, cc. 777, 859.

Article 3 - GEOLOGISTS

§ 54.1-2208.1. Exemptions

A. The certification program set forth in this article is voluntary and shall not be construed to prevent or affect the practice of geology by uncertified geologists; however, no person may represent himself as a Virginia certified professional geologist unless he has been so certified by the Board.

B. This article shall not prevent or affect the practice of any profession or trade for which licensing, certification, or registration is required under any other Virginia law, including the practice of licensed professional engineers lawfully practicing engineering in its various specialized branches.

1981, c. 132, § 54-968; 1988, c. 765, § 54.1-1401; 2012, cc. 803, 835.

§ 54.1-2208.2. Certification; minimum qualifications

A. Any person practicing or offering to practice as a geologist or in a geological specialty in this Commonwealth may submit reasonable evidence to the Board that he is qualified to practice and to be certified as provided in this article. The Board shall approve the application for certification of any person who, in the opinion of the Board, has satisfactorily met the requirements of this article and who has paid any applicable fees fixed by the Board.

Certifications shall expire at intervals as designated by the Board. A certification may be renewed by the Board upon receipt of a formal request accompanied by any applicable fees.

B. To be eligible for certification as a professional geologist, an applicant shall meet each of the following minimum qualifications:

1. Be of ethical character.

2. Have a baccalaureate or higher degree from an accredited college or university with either a major in geology, engineering geology, geological engineering, or related geological sciences; or have completed at least 30 semester hours or the equivalent in geological science courses leading to a major in geology.

3. Have at least seven years of geological work that shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional geologist or a minimum of three years of experience in responsible charge of geological work. The adequacy of the position and the required supervision and experience shall be determined by the Board in accordance with standards set forth in its regulations. The following criteria of education and experience qualify toward the required seven years of geological work:

a. Each year of full-time undergraduate study in the geological sciences shall count as one-half year of experience up to a maximum of two years, and each year of full-time graduate study shall count as a year of experience up to a maximum of three years. Credit for undergraduate and graduate study shall in no case exceed a total of four years toward meeting the requirements for at least seven years of geological work.

b. The Board may consider, in lieu of the above-described geological work, the cumulative total of geological work or geological research of persons occupying research or post-graduate positions as well as those teaching geology courses at the college or university level, provided such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the geological work required in this section.

4. Have successfully passed an appropriate examination approved by the Board and designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.

At the discretion of the Board, separate examinations may be prepared for various subspecialities of geology; however, there will be no specialty certification, only certification as a professional geologist.

1981, c. 132, §§ 54-964, 54-965; 1984, c. 51; 1988, c. 765, § 54.1-1403; 2012, cc. 803, 835.

§ 54.1-2208.3. Waiver of examination

The Board may waive the examination requirement for certification as a professional geologist for an applicant who otherwise meets the requirements of this article and who also meets any of the following conditions:

1. Makes written application to the Board and has at least 12 years of geological work that includes the geological work as specified in subsection B of § 54.1-2208.2.

2. Makes written application to the Board and holds an unexpired certificate of registration, certification, or license to engage in the practice of geology issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.

1981, c. 132, § 54-966; 1988, c. 765, § 54.1-1404; 1994, c. 247; 1996, c. 49; 2012, cc. 803, 835.

§ 54.1-2208.4. Professional ethics and conduct

A. The Board, in coordination with an ad hoc panel of certified professional geologists convened by the Board and representing various geological interests in Virginia, shall have prepared and adopted a Code of Professional Ethics and Conduct that shall be published and made known in writing to every Virginia certified professional geologist and applicant for certification under this article. The Board may revise and amend this code as needed and shall forthwith notify each certified professional geologist in writing of such revisions or amendments.

B. The full Board, by majority vote, shall have the power to suspend, revoke, or refuse to renew the certification of any professional geologist who, after an appropriate formal hearing, is found to have been involved in:

1. Any fraud or deceit in obtaining certification;

2. Any violation of the Code of Professional Ethics and Conduct or other regulations of the Board;

3. Demonstrated gross negligence, incompetence, or misconduct in the practice of geology as a professional geologist; or

4. Any conviction of a felony which, in the opinion of the Board, would adversely affect the practice of geology.

C. The Board, by majority vote of the quorum, may reinstate a revoked or suspended certification to any professional geologist who makes written application to the Board showing good cause for such action.

1981, c. 132, § 54-967; 1988, c. 765, § 54.1-1405; 2012, cc. 803, 835.

Chapter 22.1 - WASTE MANAGEMENT FACILITY OPERATORS

§ 54.1-2209. Definitions

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

"Board" means the Board for Waste Management Facility Operators.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.

"Waste management facility" means a site used for planned treatment, storage or disposal of non-hazardous solid waste.

"Waste management facility operator" means any person, including an owner, who is in charge of the actual, on-site operation of a waste management facility during any period of operation.

1991, c. 551 .

§ 54.1-2210. Board for Waste Management Facility Operators; membership; terms

The Board for Waste Management Facility Operators shall consist of seven members appointed by the Governor as follows: a representative from the Department of Environmental Quality, a representative from a local government that owns a sanitary landfill, a representative from a local government that owns a waste management facility other than a sanitary landfill, a representative of a private owner of a sanitary landfill, a representative of a private owner of a waste management facility other than a sanitary landfill, and two citizen members, one of whom shall be a representative of a commercial waste generator. No owner shall be represented by more than one representative or employee. The terms of Board members shall be four years, except that vacancies shall be filled for the unexpired term. No member shall serve more than two consecutive four-year terms.

1991, c. 551; 1996, cc. 78, 824; 2010, c. 91.

§ 54.1-2211. Duties; licensing

A. The Board shall promulgate regulations and standards for the training and licensing of waste management facility operators. The Board may establish classes of training and licensing based upon the type of waste management facility for which a waste management facility operator seeks a license. Training and licensing requirements may vary for the classes of license established by the Board based upon the type of facility and the type of waste managed at the facility. The Board shall consider an applicant's prior experience in determining whether the applicant meets the training requirements imposed by this chapter.

B. Any person may apply to the Board for approval of the training programs it administers to waste management facility operators. Such training programs shall be approved by the Board if they meet the requirements established by the Board. Any person successfully completing a training program approved by the Board shall be deemed to have met the training requirements imposed by this chapter.

1991, c. 551; 1997, c. 885.

§ 54.1-2212. License required

Effective January 1, 1993, no person shall be a waste management facility operator or represent himself as a waste management facility operator without a license from the Board.

1991, c. 551; 1997, c. 885.

Chapter 23 - WATERWORKS AND WASTEWATER WORKS OPERATORS

§ 54.1-2300. Definitions

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

"Board" means the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

"Onsite sewage system" means a conventional onsite sewage system or alternative onsite sewage system as defined in § 32.1-163.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations or to operate and maintain onsite sewage systems. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, firm or company organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.

"Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.

"Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18, if so certified by the

State Water Control Board; and (iii) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a waterworks unless certified by the Board to be such.

1970, c. 768, § 54-573.2; 1972, c. 682; 1988, c. 765; 2007, cc. 892, 924.

§ 54.1-2301. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals; membership; terms; duties

A. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals shall consist of 11 members as follows: the Director of the Office of Water Programs of the State Department of Health, or his designee, the Executive Director of the State Water Control Board, or his designee, a currently employed waterworks operator having a valid license of the highest classification issued by the Board, a currently employed wastewater works operator having a valid license of the highest classification issued by the Board, a faculty member of a state university or college whose principal field of teaching is management or operation of waterworks or wastewater works, a representative of an owner of a waterworks, a representative of an owner of a wastewater works, a licensed alternative onsite sewage system operator, a licensed alternative onsite sewage system installer, a licensed onsite soil evaluator, and one citizen member. The alternative onsite sewage system operator, alternative onsite sewage system installer, and onsite soil evaluator shall have practiced for at least five consecutive years immediately prior to appointment. No owner shall be represented on the Board by more than one representative or employee operator. The term of Board members shall be four years.

B. The Board shall examine waterworks and wastewater works operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

C. The Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators.

D. The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii) operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems; and (f) other criteria the Board deems necessary.

E. The Board shall permit any wastewater works operator to sit for the conventional onsite sewage system operator examination.

1970, c. 768, §§ 54-573.1, 54-573.3; 1981, c. 447; 1988, c. 765; 1989, c. 97; 2007, cc. 892, 924; 2008, c. 67; 2013, c. 731.

§ 54.1-2302. License required

No person shall operate a waterworks or wastewater works, perform the duties of an onsite soil evaluator, or install or operate an alternative onsite sewage system, without a valid license.

1979, c. 408, § 54-573.18; 1988, c. 765; 2007, cc. 892, 924.

Chapter 23.1 - CEMETERY OPERATORS, PERPETUAL CARE TRUST FUNDS AND PRENEED BURIAL CONTRACTS

§ 54.1-2310. Definitions

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

"Advertisement" means any information disseminated or placed before the public.

"At-need" means at the time of death or while death is imminent.

"Board" means the Cemetery Board.

"Cemetery" means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

"Cemetery company" means any person engaged in the business of (i) selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery, a single grave, or entombment right therein will be perpetually cared for; (ii) selling property or services, vaults, grave liners, urns, memorials, markers, and monuments used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed more than 120 days after receipt of the initial payment on account of such sale; or (iii) maintaining a facility used for the interment or disposal of the remains and required to maintain perpetual care or preneed trust funds in accordance with this chapter. Such property or services include but are not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this chapter.

"Cost requirement" means the total cost to the seller of the property or services subject to the deposit requirements of § 54.1-2325 required by that seller's total contracts.

"Department" means the Department of Professional and Occupational Regulation.

"Garden crypt" means a burial receptacle, usually constructed of reinforced concrete, installed in quantity on gravel or tile underlay. Each crypt becomes an integral part of a given garden area and is considered real property.

"General funds" means the sum total of specific funds put together in a single fund.

"Grave" means a below-ground right of interment.

"In-person communication" means face-to-face communication and telephonic communication.

"Interment" means all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment. The sprinkling of ashes on church grounds shall not constitute interment.

"Lawn crypt" means a burial vault with some minor modifications for the improvement of drainage in and around the receptacle and is considered personal property.

"Licensee" means any person holding a valid license issued by the Board.

"Marker base" means the visible part of the marker or monument upon which the marker or monument rests and is considered personal property.

"Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

"Memorials, markers or monuments" means the object used to identify the deceased and is considered personal property.

"Perpetual care trust fund" means a fund created to provide income to a cemetery to provide care, maintenance, administration and embellishment of the cemetery.

"Preneed" means at any time other than either at the time of death or while death is imminent.

"Preneed burial contract" means a contract for the sale of property or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than 120 days after the receipt of initial payment on account of such sale. Such property includes but is not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Resale" means the sale of an interment right in a cemetery governed by this chapter to a person other than the cemetery company owning the cemetery in which the right exists by a person other than that cemetery company or its authorized agent. The term "resale" shall not be construed to include the transfer of interment rights upon the death of the owner.

"Retail sales price" means the standard, nondiscounted price as listed on the general price list required by § 54.1-2327.

"Seller" means the cemetery company.

"Seller's trust account" means the total specific trust funds deposited from all of a specific seller's contracts, plus income on such funds allotted to that seller.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a cemetery.

"Specific trust funds" means funds identified to a certain contract for personal property or services.

1998, cc. 708, 721; 2000, c. 36; 2011, c. 792.

§ 54.1-2311. Cemetery operators required to be licensed by the Board

No person shall engage in the business of a cemetery company in the Commonwealth without first being licensed by the Board. The cemetery company shall renew its license as required by the Board. Such license and such renewal of license shall (i) be on forms prescribed by the Board and shall include the name and address of each cemetery in Virginia in which the cemetery company has a business interest, the name and address of all officers and directors of the cemetery company, the registered agent for the cemetery company, the compliance agent, and any such other information as the Board may require consistent with the purposes of this chapter and (ii) include a fee as prescribed by the Board for each cemetery in Virginia in which the cemetery company has a business interest. The cemetery company shall notify the Board of any change in the information required to be filed within thirty days after the change. A new license shall be required if there is a change in the ownership of the cemetery company. If there is a change in the compliance agent designated by the cemetery company, it shall promptly notify the Board in writing. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Department to be used in the administration of this chapter.

1998, cc. 708, 721.

§ 54.1-2312. Exemptions

A. The provisions of this chapter shall not apply to cemeteries wholly owned and operated by the state or a county, city or town; a church; or a nonstock corporation not operated for profit if the corporation (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, (ii) does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn, garden or mausoleum crypts, and (iii) uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery.

B. The provisions of this chapter shall not apply to any community cemetery not operated for profit if the cemetery (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, and uses the proceeds from

the sale of the graves and mausoleum spaces for the sole purpose of defraying the direct expenses of maintaining its facilities or (ii) was chartered by the Commonwealth prior to 1857 A.D.

C. The provisions of this chapter regarding preneed burial contracts shall not apply to prearranged funeral plans entered into by licensees of the Board of Funeral Directors and Embalmers.

D. The provisions of the chapter shall not apply to any family cemetery provided that no graves or entombment rights therein are sold or offered for sale to the public.

E. Subject to the requirements of § 54.1-2312.1, the provisions of this chapter shall not apply to the resale of any interment right in a cemetery in the Commonwealth.

1998, cc. 708, 721; 2011, c. 792.

§ 54.1-2312.01. Special interments; definitions; regulations by Board

A. A cemetery company may have a section in the cemetery devoted to the interment of human remains and the pets of such deceased humans, provided:

1. The section of the cemetery property dedicated for this purpose is segregated entirely from the remainder of the cemetery devoted to the interment of human remains;

2. No pet is interred in the same grave, crypt, or niche as the remains of a human; and

3. The section of the cemetery is clearly marked and advertised as such by the cemetery company.

B. A cemetery company may have a section in the cemetery devoted to the interment of pets, provided:

1. The section of the cemetery property dedicated for this purpose is segregated entirely from the remainder of the cemetery devoted to the interment of human remains; and

2. The section of the cemetery is clearly marked and advertised as such by the cemetery company.

C. As used in the section, "pet" means the same as that term is defined in § 57-39.20.

D. The Board shall adopt such regulations as the Board deems appropriate and necessary to implement the provisions of this section. Regulations of the Board shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

2014, c. 500.

§ 54.1-2312.1. Resale of interment right; conditions for resale transaction; contents of transfer form; approval by cemetery company

A. No person shall participate as a seller in more than four consummated resale transactions in any calendar year except as authorized by this section or § 54.1-2312.2.

B. Unless exempted by subsection A, no resale transaction shall be valid unless:

1. The resale is at-need;

2. The seller is (i) a funeral director, embalmer, establishment, or service licensed pursuant to Chapter 28 (§ 54.1-2800 et seq.) or (ii) a cemetery company licensed pursuant to this chapter;

3. No more than one interment right is transferred by the transaction;

4. Any merchandise, personal property, or service purchased in the original pre-need transaction is transferred with the interment right;

5. The resale is approved, pursuant to subsection C, by the cemetery company that owns the cemetery in which the interment right exists; and

6. The seller provides written notice to the buyer that the resale transaction is contingent upon (i) approval by the cemetery company that owns the cemetery in which the interment right exists, (ii) payment of the cemetery transfer fee, and (iii) compliance with the provisions of this section.

C. A cemetery company shall approve a resale transaction upon receipt of a valid transfer form that has been acknowledged by the buyer as required by subsection D 6, a reasonable cemetery transfer fee to be set by the cemetery company, and a copy of the bill of sale or other document confirming the resale, provided such approval is consistent with the current rules and regulations of the cemetery company.

D. The transfer form shall be provided by the seller to the buyer at the time of the resale and shall be valid only when signed by the seller, buyer, and cemetery company. At a minimum, the transfer form shall contain the following information:

1. The name and address of each seller and buyer;

2. The valid license number of each seller under Chapter 28 (§ 54.1-2800 et seq.) or under this chapter;

3. A complete description of the location of the property for which the interment right is being sold;

4. A clear disclosure of the cemetery transfer fee;

5. The name, address, and telephone number of the Board and a statement that the Board is the regulatory agency that handles consumer complaints; and

6. An acknowledgement that the buyer has read, understands, and agrees to abide by the current rules and regulations of the cemetery and its current general price list, as applicable.

The information required to be included in the transfer form by subdivisions 1 through 5 shall be provided by the seller.

E. In the event a resale is not approved by the cemetery company under this section, the resale transaction shall be void and within 30 days the seller shall refund to the buyer any and all moneys paid pursuant to the transaction and the buyer shall return to the seller any merchandise or personal property that was transferred to the buyer by the seller as a part of the resale.

2011, c. 792; 2013, c. 395.

§ 54.1-2312.2. Resale of interment right by certain churches and religious organizations

A. In addition to the provisions of § 54.1-2312.1, a church or religious organization may proceed with a resale transaction of an interment right if (i) the church or religious organization is exempt from income tax under Title 58.1 or from taxation pursuant to § 501(c)(3) of the Internal Revenue Code and (ii) the buyer is a member of the church congregation or religious organization or an immediate family member of such member.

B. Resale transactions under this subsection shall also comply with the following:

1. Any merchandise, personal property, or service purchased in the original preneed transaction is transferred with the interment right;

2. The resale is approved, pursuant to subdivision 4, by the cemetery company that owns the cemetery in which the interment right exists;

3. The seller provides written notice to the buyer that the resale transaction is contingent upon (i) approval by the cemetery company that owns the cemetery in which the interment right exists, (ii) payment of the cemetery transfer fee, and (iii) compliance with the provisions of this section;

4. A cemetery company shall approve a resale transaction upon receipt of a valid transfer form that has been acknowledged by the buyer as required by subdivision 5 e, a reasonable cemetery transfer fee to be set by the cemetery company, and a copy of the bill of sale or other document confirming the resale, provided such approval is consistent with the current rules and regulations of the cemetery company; and

5. The transfer form shall be provided by the seller to the buyer at the time of the resale and shall be valid only when signed by the seller, buyer, and cemetery company. A cemetery company may rely in good faith on the representations and documentation submitted by the buyer and seller. At a minimum, the transfer form shall contain the following information:

a. The name and address of each seller and buyer;

b. A complete description of the location of the property for which the interment right is being sold;

c. A clear disclosure of the cemetery transfer fee;

d. The name, address, and telephone number of the Board and a statement that the Board is the regulatory agency that handles consumer complaints; and

e. An acknowledgment that the buyer has read, understands, and agrees to abide by the current rules and regulations of the cemetery and its current general price list, as applicable.

The information required to be included in the transfer form by subdivisions a through d shall be provided by the seller.

C. In the event a resale is not approved by the cemetery company under this section, the resale transaction shall be void and within 30 days the seller shall refund to the buyer all money paid pursuant to the transaction and the buyer shall return to the seller any merchandise or personal property transferred to the buyer by the seller as a part of the resale.

D. Nothing in this section shall prevent a church or religious organization exempt from income tax under Title 58.1 or from taxation pursuant to § 501(c)(3) of the Internal Revenue Code from reselling any interment right back to the cemetery company. Subsequent sale of such interment rights by the cemetery company shall not be considered a resale transaction.

E. Nothing in this section shall prevent a cemetery company from reselling an interment right of a natural person.

2013, c. 395.

§ 54.1-2313. Board; appointment; terms; vacancies; meetings; quorum; other powers; regulations

A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows: four cemetery operators who have operated a cemetery in the Commonwealth for at least five consecutive years immediately prior to appointment, no more than two of whom shall be affiliated with a cemetery company incorporated in the Commonwealth which is owned, operated or affiliated, directly or indirectly, with a foreign corporation; one representative of local government, and two citizen members. Appointments to the Board shall generally represent the geographical areas of the Commonwealth.

B. All appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive four-year terms.

C. The Board shall annually elect a chairman and a vice-chairman from among its members. The Board shall meet at least once each year and may meet as often as its duties require. Four members shall constitute a quorum.

D. In addition to the general powers and duties conferred in this subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this chapter.

E. In addition to such other regulations the Board deems appropriate, the Board shall adopt regulations which provide:

1. A method for executing, at-need, a preneed burial contract, including the petitioning a court of competent jurisdiction for the appointment of a receiver, where a licensee who is a party to such preneed burial contract has had his license to operate a cemetery revoked or suspended for violation of this chapter or Board regulations; and

2. Consumer protections which are consistent with those provisions of the Federal Trade Commission Funeral Rules which the Board finds may be appropriately applied to cemetery companies.

1998, cc. 708, 721; 2004, c. 247; 2010, c. 91; 2012, c. 522.

§ 54.1-2313.1. Protection of preneed burial and perpetual care trust funds; operation of cemetery company; appointment of receiver

No licensee or any agent of the licensee shall divert or misuse any funds held in trust or otherwise held by him for another. If preneed or perpetual care funds are held in trust and the Board or its agents have reason to believe that (i) the licensee is not able to adequately protect the interest of the person involved, (ii) the licensee has had his license suspended, revoked or surrendered, or (iii) the conduct of the licensee or the operation of the cemetery threatens the interests of the public, the Board may file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies and the relief requested. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to ensure that the cemetery company is operated in full compliance with this chapter and the Board's regulations, or to conserve, protect, and disburse the funds involved, or both, including the appointment of a receiver to operate the cemetery company. The Board shall not be liable for any expenses or fees of the receiver.

2004, c. 192.

§ 54.1-2314. Refusal, suspension or revocation of license or registration

The Board may refuse to license or register any applicant, suspend a license or registration for a stated period or indefinitely, revoke any license or registration, censure or reprimand any person licensed or registered by the Board or place such person on probation for such time as it may designate for any of the following causes related to the sale or offering to the public of cemetery vaults, grave liners, urns, memorials, markers or monuments:

1. Conviction of any felony or any crime involving moral turpitude;

2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;

3. Misrepresentation or fraud in the conduct of the cemetery company or its sales personnel, or in obtaining or renewing a license or registration;

4. False or misleading advertising;

5. Solicitation in violation of subsection B of § 54.1-2327;

6. Direct or indirect payment or offer of payment of a commission to others by the licensee, his sales representatives, agents, or employees for the purpose of securing business;

7. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed or registered activity;

8. Aiding or abetting an unlicensed person to engage in the business of a cemetery company;

9. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has been interred or otherwise disposed of;

10. Violation of any statute, ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;

11. Failure to comply with subsection A of § 54.1-2327 and to keep on file an itemized statement of all retail prices and fees charged related to the sale of property or services as required by Board regulations and this chapter;

12. Charging third-party handling fees, which shall not include installation fees; and

13. Refusing to honor the transfer of preneed contract arrangements to another party. However the licensee shall not be responsible for paying additional costs associated with any actual transfer.

1998, cc. 708, 721.

§ 54.1-2315. Other prohibited activities

The following acts shall be prohibited:

1. Employment directly or indirectly of any sales representative, agent, employee or other person, on a part-time or full-time basis, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment or cemetery company;

2. Solicitation, offer, payment, or acceptance by a licensee or registered sales personnel of a licensee, of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;

3. Violating or cooperating with others to violate any provision of this chapter or Board regulations;

4. Interfering with the freedom of choice of the general public in the choice of persons or establishments providing funeral services, preneed funeral planning or preneed funeral contracts.

Nothing in this section shall preclude a cemetery company employing or retaining a sales representative, agent, employee or other person, on a part-time or full-time basis, from offering cemetery company goods and services on a commission basis.

1998, cc. 708, 721.

§ 54.1-2316. Certain representations unlawful; perpetual care trust fund required

It shall be unlawful to sell or offer for sale in the Commonwealth any grave or entombment right in a cemetery and, in connection therewith, to represent to the public in any manner, express or

implied, that the entire cemetery or any grave or entombment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all graves and entombment rights therein as to which such representation has been made.

Each cemetery company shall establish in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, an irrevocable trust fund in the amount of at least $50,000 before the first lot, parcel of land, burial or entombment right is sold. This fund shall be designated the perpetual care trust fund.

1998, cc. 708, 721; 2004, c. 192.

§ 54.1-2317. Who may serve as trustee of perpetual care trust fund

A. The trustee of the perpetual care trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when it has become satisfied that the applicant:

1. Employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

2. Will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized; and

3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Perpetual Care Trust Fund for (name of cemetery company)," in a sum equal to not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a perpetual care trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

1998, cc. 708, 721.

§ 54.1-2318. Application of Part A (§ 64.2-1200 et seq.) of Subtitle IV of Title 64.2

Trustees appointed pursuant to this chapter shall be governed in their investment of trust funds by § 2.2-4519 and §§ 64.2-1502 through 64.2-1506, except as otherwise provided in this chapter.

1998, cc. 708, 721.

§ 54.1-2319. Deposit in perpetual care trust fund required upon sale of graves, etc

Each cemetery company shall deposit a minimum of ten percent of the receipts from the sale of graves and above-ground crypts and niches, excluding below-ground burial vaults, in cash in the perpetual care trust fund within thirty days after the close of the month in which such receipts are paid to it. If the purchaser's payment is made on an installment or deferred payment basis, the cemetery company shall have the option of paying ten percent of the amount of principal in each payment received into the perpetual care trust fund. If the cemetery company provides a grave or an above-ground crypt or niche without compensation, ten percent of the retail sales price shall be deposited within thirty days after the close of the month in which the property is provided to the consumer.

1998, cc. 708, 721; 2000, c. 36.

§ 54.1-2320. Additional deposit not required upon subsequent sale of same grave, crypt or niche

If ten percent of the sales price of a grave or above-ground crypt or niche has been deposited in a perpetual care trust fund, no deposit shall be required on subsequent sales of the same grave, crypt or niche.

1998, cc. 708, 721.

§ 54.1-2321. Recovery of original perpetual care trust fund deposit

Once the cemetery company has deposited in the perpetual care trust fund a sum equal to twice the amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery company to recover its original deposit by withholding the money that would otherwise be required to be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once the cemetery company has recovered an amount equal to its original deposit, deposits to the perpetual care trust fund shall be resumed.

1998, cc. 708, 721.

§ 54.1-2322. Use of income from perpetual care trust fund

A. The income from the perpetual care trust fund shall be used solely and exclusively for the general care, maintenance, administration, and embellishment of the cemetery. Unless prior approval has been obtained from the Board or a court of competent jurisdiction, the principal of the perpetual care trust fund shall only be used for investment purposes.

B. No portion of the perpetual care trust fund shall be used to pay any personal obligation or debt of any officer or owner of the cemetery or any tax obligation incurred by the cemetery or for any purpose other than that expressly described in this section. Nothing in this section shall be

construed to limit the ability of the perpetual care trust fund trustee from paying normal operating expenses and income taxes of the trust itself, the trust being a separate legal entity.

1998, cc. 708, 721; 2004, c. 192; 2012, c. 355.

§ 54.1-2323. Financial records required

The cemetery company shall file with the Board detailed accounts of all transactions, receipts and accounts receivable subject to the ten percent trust requirement and of all expenditures of income from the perpetual care trust fund at such times as required by the Board.

1998, cc. 708, 721.

§ 54.1-2324. Financial report and report of independent certified public accountant required for perpetual care trust funds

A. Within four months after the close of its fiscal year, the cemetery company shall report the following information to the Board, on forms prescribed by the Board:

1. The total amount of principal in the perpetual care trust fund;

2. The securities in which the perpetual care trust fund is invested and the amount of cash on hand as of the close of the fiscal year;

3. The income received from the perpetual care trust fund, and the sources of such income, during the preceding fiscal year;

4. An affidavit executed by the compliance agent that all applicable provisions of this chapter relating to perpetual care trust funds have been complied with;

5. The total receipts subject to the 10 percent trust requirement;

6. All expenditures from the perpetual care trust fund;

7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect; and

8. A separate total of expenses incurred for general care and maintenance, embellishment and administration of its cemeteries.

B. The cemetery company shall (i) engage an independent certified public accountant to apply agreed-upon procedures as specified by the Board to the total of all receipts subject to § 54.1-2319, in accordance with standards established by the American Institute of Certified Public Accountants or any successor standard authorities, and (ii) provide to the Board the independent certified public accountant's report on the agreed-upon procedures. The information provided by the cemetery company shall provide full disclosure of any transactions between the perpetual care trust fund and any directors, officers, stockholders, or employees of the cemetery company, or relatives of the cemetery company's employees, and shall include a description of the transactions,

the parties involved, the dates and amounts of the transactions, and the reasons for the transactions.

C. The information required to be filed hereunder with the Board shall be exempt from the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

1998, cc. 708, 721; 2000, c. 36; 2004, c. 247; 2015, c. 344.

§ 54.1-2325. Deposit in preneed trust required upon sale of property or services not to be delivered within 120 days

A. Each cemetery company shall deposit into a trust fund at least forty percent of the receipts from the sale of property or services purchased pursuant to a preneed burial contract, when the delivery thereof will be delayed more than 120 days from the initial payment on said contract. The cemetery company shall establish a special trust fund in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth. The trust shall bear the legend "Preneed Trust Account." Deposits are required to be made by the cemetery company within thirty days after the close of the month in which said receipts are paid to it.

B. If the purchaser's payment is made on an installment or deferred payment basis, the seller shall have the option of paying each payment received into the preneed trust account.

1998, cc. 708, 721.

§ 54.1-2326. Who may serve as trustee of preneed trust fund

A. The trustee of the preneed trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when the Board has become satisfied that the applicant:

1. Employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

2. Will perform its duties in a proper and legal manner and that the trust funds and interest of the public generally will not be jeopardized; and

3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Preneed Trust Fund for (name of cemetery company)," in a sum equal to but not less than 100

percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a preneed trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

1998, cc. 708, 721.

§ 54.1-2327. Itemized statement and general price list of burial fees to be furnished; solicitations prohibited

A. Every cemetery company licensed pursuant to the provisions of this chapter shall furnish a written general price list and a written itemized statement of charges in connection with burial services provided by the cemetery company.

Individuals inquiring in person about burial arrangements or the prices of property or services shall be given the general price list. Upon beginning discussion of burial arrangements or the selection of any property or services, the general price list shall be offered by the cemetery company.

The itemized statement shall include, but not be limited to, the following charges: burial vaults or other burial receptacles, facilities used, and other professional services used, which shall be set forth in a clear and conspicuous manner.

The general price list and itemized statement of burial fees shall comply with forms prescribed by Board regulation, which regulations shall promote the purposes of this section.

B. No cemetery company licensed pursuant to the provisions of this chapter shall make any solicitation at-need or any preneed solicitation using in-person communication by the cemetery company, his agents, assistants or employees, which is false, misleading, or contrary to the stated purpose. However, general advertising and preneed solicitation shall be permitted.

1998, cc. 708, 721.

§ 54.1-2328. Requirements of preneed burial contracts

A. It shall be unlawful for any person doing business within the Commonwealth to make, either directly or indirectly by any means, a preneed burial contract unless the contract:

1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;

2. Identifies the seller, seller's license number, contract buyer and person for whom the contract is purchased if other than the contract buyer;

3. Contains a complete description of the property or services purchased;

4. Clearly discloses whether the price of the property and services purchased is guaranteed;

5. States, for funds required to be trusted pursuant to § 54.1-2325, the amount to be trusted and the name of the trustee;

6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;

7. Provides that any purchaser who makes payment under the contract may terminate the agreement within three days of execution and that such purchaser shall be refunded all consideration paid or delivered, less amounts paid for any property or supplies that have been delivered;

8. Provides that if the particular property or services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property or services similar in size and style and at least equal in quality of material and workmanship and that the representative of the deceased shall have the right to choose the property or services to be substituted, which shall be at least equal or reasonably equivalent in quality of material, workmanship, and cost;

9. Discloses any additional costs that the purchaser may be required to pay at-need, including disclosure of the cost of opening and closing the grave;

10. Complies with all disclosure requirements imposed by the Board;

11. Is executed in duplicate and a signed copy given to the buyer; and

12. Provides that the contract buyer shall have the right to change the contract provider at any time prior to the furnishing of the property or services, excluding any mausoleum crypt or garden crypt, contracted for under the preneed burial contract. If the contract seller will not be furnishing the property and services to the purchaser, the contract seller shall attach to the preneed burial contract a copy of the seller's agreement with the provider.

B. Any preneed burial contract sold or offered by any cemetery company or agent with a trust fund deposit of less than 100 percent shall be required to include the following printed statement in capitalized letters, in ten-point, bold-faced type:

THIS PRENEED BURIAL CONTRACT REQUIRES THE PLACEMENT IN TRUST OF A MINIMUM OF 40% OF THE FUNDS INCLUDED IN THIS CONTRACT. THE BALANCE OF FUNDS MAY BE USED FOR CARE AND MAINTENANCE OF THE CEMETERY AND ARE NOT REQUIRED TO BE PLACED IN TRUST.

1998, cc. 708, 721.

§ 54.1-2329. Identification of specific funds

Specific funds deposited in the trust account shall be identified in the records of the seller by the contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed trust account for the purposes of the management thereof and the investment of funds therein.

1998, cc. 708, 721.

§ 54.1-2330. Specific funds and income to remain in preneed trust account; exception

Specific funds shall remain intact until the property is delivered or services performed as specified in the contract. The net income from the preneed trust account, after payment of any appropriate trustee fees, commissions, and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions, and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon written assurance to the trustee of a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the specific funds, is in excess of the current cost requirements for all undelivered property or services included in the seller's preneed burial contracts. The seller's cost requirements shall be certified in its records by an affidavit sworn by the compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal year.

1998, cc. 708, 721.

§ 54.1-2331. Disbursement of trust funds upon performance of contract

A. Upon performance of the preneed burial contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified to the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property or services and the consideration paid or to be paid therefor, to which the deposit requirements of this chapter apply. In such case, the seller may, upon certification to the trustee of performance or delivery of such property or services and of the amount of specific trust funds identified in its records to such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

B. If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed burial contract. In such case, upon performance of that portion of the contract identified to a particular individual, the seller may request, by certification in the manner described above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

1998, cc. 708, 721.

§ 54.1-2332. Seller required to keep records

Each seller of a preneed burial contract shall file with the Board at such time as the Board may prescribe, detailed accounts of all contracts and transactions regarding preneed burial contracts.

1998, cc. 708, 721.

§ 54.1-2333. Financial report and report of independent certified public accountant required for preneed trust accounts

A. The cemetery company shall report the following information to the Board within four months following the cemetery company's fiscal year, on forms prescribed by the Board:

1. The total amount of principal in the preneed trust account;

2. The securities in which the preneed trust account is invested;

3. The income received from the trust and the source of that income during the preceding fiscal year;

4. An affidavit executed by the compliance agent that all provisions of this chapter applicable to the seller relating to preneed trust accounts have been complied with;

5. Forty percent of the total receipts required to be deposited in the preneed trust account;

6. All expenditures from the preneed trust account; and

7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect.

B. The cemetery company shall (i) engage an independent certified public accountant to apply agreed-upon procedures as specified by the Board to the total of all receipts subject to § 54.1-2325, in accordance with standards established by the American Institute of Certified Public Accountants or any successor standard authorities, and (ii) provide to the Board the independent certified public accountant's report on the agreed-upon procedures.

The information provided by the cemetery company shall provide full disclosure of any transactions between the preneed trust account and any directors, officers, stockholders, or employees of the cemetery company, or relatives of the cemetery company's employees, and shall include a description of the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for the transactions.

C. The information required to be filed hereunder with the Board shall be exempt from the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

1998, cc. 708, 721; 2000, c. 36; 2004, c. 247; 2015, c. 344.

§ 54.1-2334. Inclusion of property and services to be delivered within 120 days

Nothing in this chapter shall be deemed to prohibit the sale within the preneed burial contract of property or services to be delivered within 120 days after the receipt of the initial payment on account of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property or services not to be delivered or provided within 120 days after receipt of initial payment. If a contract does not so specify, the seller shall deposit forty percent of the total consideration for the entire contract.

1998, cc. 708, 721.

§ 54.1-2335. Breach of contract by seller; trust to be single purpose trust

If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the

purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to or receive notice of any proceeding brought pursuant to this section relating to the performance of any other contract.

The trust shall be a single purpose trust, and the trust funds shall not be available to any creditors as assets of the seller.

1998, cc. 708, 721.

§ 54.1-2336. Trustee may rely on certifications and affidavits

The trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of this chapter and shall not be liable to any person for such reasonable reliance.

1998, cc. 708, 721.

§ 54.1-2337. Transfer of trust funds to another trustee

The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another trustee qualified under the provisions of this chapter. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another trustee qualified under the provisions of this chapter. No seller's account funds or trustee's trust funds may be transferred to another trustee unless the seller provides written notice at least five days prior to such transfer to the Board.

1998, cc. 708, 721.

§ 54.1-2338. Use of trustee's name in advertisements

No person subject to the provisions of this chapter shall use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

1998, cc. 708, 721.

§ 54.1-2339. Construction and development of mausoleums and garden crypts

Within four years after the date of the first sale, a cemetery company or other seller of mausoleums and garden crypts shall be required to start construction or development of that undeveloped ground or section of a mausoleum or garden crypt in which sales, contracts for sales, or agreements for sales are being made. The construction or development of such undeveloped mausoleum section or garden crypt shall be completed within five years after the date of the first such sale. Completed construction shall be deemed performance for purposes of this chapter.

1998, cc. 708, 721.

§ 54.1-2340. Waiver of chapter void

Any provision of any contract which purports to waive any provision of this chapter shall be void.

1998, cc. 708, 721.

§ 54.1-2341. Exemption from levy, garnishment and distress

Any money, personal property or real property paid, delivered or conveyed subject to § 54.1-2325 shall be exempt from levy, garnishment or distress.

1998, cc. 708, 721.

§ 54.1-2342. Penalties

Any person who violates any of the provisions of this chapter shall be subject to the sanctions provided in Chapter 1 (§ 54.1-100 et seq.) and Chapter 2 (§ 54.1-200 et seq.) and in §§ 54.1-2314, 54.1-2317, and 54.1-2326. Any person who is convicted of willfully violating any of the provisions of this chapter is guilty of a Class 1 misdemeanor. Any person convicted of violating, or failing to comply with, any of the provisions of § 54.1-2317, 54.1-2319, 54.1-2321, 54.1-2322, 54.1-2325 or 54.1-2326 with the intent to defraud is guilty of a Class 6 felony.

For the purposes of this section, "person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, instrumentality, officer or employee thereof.

1998, cc. 708, 721; 2005, c. 691.

Chapter 23.2 - FAIR HOUSING BOARD

§ 54.1-2343. Definitions

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

"Board" means the Fair Housing Board.

"Fair Housing Law" means the provisions of Chapter 5.1 (§ 36-96.1 et seq.) of Title 36.

"Person in the business or activity of selling or renting dwellings" means any person who is the owner of any combination of residential dwelling units occupied by five or more families. "Person in the business or activity of selling or renting dwellings" shall not include any person involved in the sale of a dwelling or interest therein pursuant to a deed of trust, or in full or partial satisfaction of a debt that was secured by such dwelling or interest therein, or other lien on such property.

2003, c. 575; 2010, cc. 457, 620.

§ 54.1-2344. Fair Housing Board; membership; terms; chairman; powers and duties

A. The Fair Housing Board shall be composed of 12 members, to be appointed by the Governor, as follows: one representative of local government, one architect licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of this title, one representative of the mortgage lending industry, one representative of the property and casualty insurance industry, two representatives of the residential property management industry not licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of this title, at least one of whom is a member of a property owners' association or condominium unit owners' association, one contractor licensed in accordance with Chapter 11 (§ 54.1-1100 et

seq.) of this title, one representative of the disability community, one representative of the residential land lease industry subject to Chapter 13.3 (§ 55-248.41 et seq.) of Title 55, and three citizen members selected in accordance with § 54.1-107. All terms of Board members shall be for terms of four years.

B. The Board shall elect a chairman from its membership.

C. The Board shall adopt a seal by which it shall authenticate its proceedings.

D. The Board shall be responsible for the administration and enforcement of the Fair Housing Law. However, the Board shall have no authority with respect to any of the following respondents who have allegedly violated, or who have in fact violated, the Fair Housing Law: (i) a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees or (ii) a property owner or his agent or principal, who has engaged a real estate licensee to perform real estate activities within the purview of Chapter 21 (§ 54.1-2100 et seq.), which licensee has also been charged with a violation of the Fair Housing Law in the same case. In no event shall the jurisdiction be split between the Real Estate Board and the Board on the same such case.

The Board shall have the power and duty to establish, by regulation, an education-based certification or registration program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings. The Board shall also establish, by regulation, educational materials on the Fair Housing Law and require a signed affidavit from persons in the business or activity of selling or renting dwellings, that they have read and understood the provided materials. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.

No education-based program established by the Board shall require Board certification or registration where an individual holds a valid license issued by the Real Estate Board. Any courses approved by the Real Estate Board to meet the fair housing requirement of § 54.1-2105.03 and the instructors approved by the Real Estate Board to teach continuing education courses in accordance with § 54.1-2105.02 shall not require additional approval by the Fair Housing Board to meet any education requirements in this section and in the regulations of the Fair Housing Board.

2003, c. 575; 2007, cc. 809, 874; 2010, cc. 91, 457, 620; 2013, c. 190.

Chapter 23.3 - COMMON INTEREST COMMUNITIES

§ 54.1-2345. Definitions

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

"Association" means the same as that term is defined in § 55-528.

"Board" means the Common Interest Community Board.

"Common interest community" means the same as that term is defined in § 55-528; provided that for the purposes of this chapter only, a common interest community shall not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) or any additional land that is a part of such registration.

"Common interest community manager" means a person or business entity, including but not limited to a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" means the same as that term is defined in § 55-528.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.

"Lot" means the same as that term is defined in § 55-528.

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

2008, cc. 851, 871.

§ 54.1-2346. License required; certification of employees; renewal; provisional license

A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this chapter prior to engaging in such management services.

B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111.

C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the

provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be $10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

F. The Board shall issue a provisional license to any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009. Such provisional license shall expire on June 30, 2012, and shall not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.

2008, cc. 851, 871; 2011, cc. 334, 605.

§ 54.1-2347. Exceptions and exemptions generally

A. The provisions of this chapter shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;

2. An employee of an association from providing management services for that association's common interest community;

3. A resident of a common interest community acting without compensation from providing management services for that common interest community;

4. A resident of a common interest community from providing bookkeeping, billing, or recordkeeping services for that common interest community for compensation, provided the blanket fidelity bond or employee dishonesty insurance policy maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;

5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;

6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;

7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

2008, cc. 851, 871; 2010, c. 511; 2011, cc. 334, 605.

§ 54.1-2348. Common Interest Community Board; membership; meetings; quorum

There is hereby created the Common Interest Community Board (the Board) as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. Members of the Board shall be appointed by the Governor and consist of eleven members as follows: three shall be

representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, two shall be representatives of developers of Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an association that is not professionally managed at the time of appointment and two of whom reside in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of two years and one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of three years; the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association shall serve a term of two years, and the two Virginia citizens who reside in a common interest community shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.

The Board shall meet at least once each year and at other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

2008, cc. 851, 871; 2010, c. 511; 2012, c. 522.

§ 54.1-2349. Powers and duties of the Board

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) $1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding year. For the purposes of clause (ii), no minimum payment shall be less than $10. The annual payment shall be

remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter;

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common

interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter; and

8. Develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act (§ 55-508 et seq.).

B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this chapter, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this chapter or Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

2008, cc. 851, 871; 2009, c. 557; 2010, cc. 511, 615; 2011, c. 334; 2012, cc. 481, 797; 2015, c. 268.

§ 54.1-2350. Annual report and disclosure packets

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1; and

3. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to § 55-509.5, which form shall summarize the unique characteristics of property owners' associations generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including but not limited to the obligation of a lot owner to pay regular annual or special assessments to the association, the penalty for failure or refusal to pay such assessments, the purposes for which such assessments may be used, and the importance the declaration of restrictive covenants and other governing documents play in association living.

2008, cc. 851, 871.

§ 54.1-2351. General powers and duties of Board concerning associations

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action or suit involving a violation by a declarant or a developer of a time-share project of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this chapter, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than $1,000 per violation against any governing board that violates any provision of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or

orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

2008, cc. 851, 871; 2009, c. 557; 2010, c. 615.

§ 54.1-2352. Cease and desist orders

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter, if the Board determines after notice and hearing that the governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this chapter, including engaging in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders;

2. Failed to register as an association or to file an annual report as required by statute or regulation;

3. Materially misrepresented facts in an application for registration or an annual report; or

4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Board shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

2008, cc. 851, 871; 2009, c. 557.

§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for

each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager; and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a

receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the

common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant to § 55-530.1, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made

available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

2008, cc. 851, 871; 2011, cc. 334, 605.

§ 54.1-2354. Variation by agreement

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this chapter and the provisions of Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, as applicable.

2008, cc. 851, 871.

Chapter 23.4 - NATURAL GAS AUTOMOBILE MECHANICS AND TECHNICIANS

§ 54.1-2355. Definitions

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

"Certified NG automobile mechanic or technician" means a person certified by the Director who offers to the public for compensation services relating to the repair, conversion, or maintenance of motor vehicles that use in whole or in part natural gas as a fuel.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Motor vehicle" means an automobile, motorcycle, mobile home, truck, van, or other vehicle operated on public highways and streets.

"Natural gas" means a combustible mixture of gaseous hydrocarbons that accumulates in porous sedimentary rocks, especially those yielding petroleum, consisting usually of over 80 percent methane together with minor amounts of ethane, propane, butane, nitrogen, and, sometimes, helium used as a fuel.

2014, c. 763.

§ 54.1-2356. Powers and duties of the Department

The Department shall administer and enforce the provisions of this chapter. In addition to the powers and duties otherwise conferred by law, the Director shall have the powers and duties of a regulatory board as contained in §§ 54.1-201 and 54.1-202 and shall have the power and duty to:

1. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that implement the provisions of this chapter and protect the public against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities regulated by this chapter. The regulations shall include requirements for (i) initial and renewal certification, (ii) standards of practice for certified NG automobile mechanics and technicians, (iii) grounds for disciplinary actions against persons certified under this chapter, and (iv) records to be kept and maintained by persons certified under this chapter.

2. Charge each applicant for certification and for renewal of certification a nonrefundable fee subject to the provisions of § 54.1-113.

3. Conduct investigations to determine the suitability of applicants for certification and to determine the certificate holder's compliance with applicable statutes and regulations.

2014, c. 763.

§ 54.1-2357. Certification required

No person shall use or assume the title "Certified NG Automobile Mechanic" or "Certified NG Automobile Technician" or any words, letters, signs, or devices to indicate that person is a certified NG automobile mechanic or technician unless certified by the Director.

2014, c. 763.

§ 54.1-2358. Issuance of certification; waiver of examination

The Director shall issue a certification to practice as an NG automobile mechanic or technician in the Commonwealth to every applicant who shall have complied with the requirements of this chapter and the regulations of the Director.

The Director shall certify any person who is a graduate of a program accredited by an accrediting organization or a professional program approved by the Director and who has one year of monitored experience in the performance of services relating to the repair or maintenance of motor vehicles and who has taken and passed the examination for certification.

The Director, in his discretion, shall determine whether an applicant's professional education and professional experience in the field of natural gas automobile mechanics are sufficient to establish eligibility for the examination.

The Director, in lieu of all examinations, may accept satisfactory evidence of licensing or certification in another state or country or the District of Columbia where (i) the qualifications for such licensure or certification are equal, in the opinion of the Director, to the qualifications required by the provisions of this chapter as of the date of application and (ii) the applicant is the holder of a license or certificate in good standing. Upon receipt of such satisfactory evidence and

provided all other such requirements of this chapter are complied with, a certificate shall be issued to such applicant.

2014, c. 763.

Subtitle III - PROFESSIONS AND OCCUPATIONS REGULATED BY BOARDS WITHIN THE DEPARTMENT OF HEALTH PROFESSIONS

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, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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. (Effective until January 1, 2017) To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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.

6. (Effective January 1, 2017) To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. 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.).

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege 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 Director and the Health Practitioners' Monitoring 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, and to accept, in their discretion, the surrender of a license, certificate, registration or multistate licensure privilege in lieu of disciplinary action.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, permit or multistate licensure privilege in nursing. The special conference committee may (i) exonerate; (ii) reinstate; (iii) place the practitioner or permit holder on probation with such terms as it may deem appropriate; (iv) reprimand; (v) modify a previous order; (vi) impose a monetary penalty pursuant to § 54.1-2401, (vii) deny or grant an application for licensure, certification, registration, permit, or multistate licensure privilege; and (viii) issue a restricted license, certification, registration, permit or multistate licensure privilege subject to terms and conditions. The order of the special conference committee shall become final 30 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 30-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 § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. The recommendation of such subordinate may be considered by 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, convened for the purpose of issuing a case decision. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

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 § 2.2-4020, 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 § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 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.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, or matters referred for formal proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. To request and accept from a certified, registered or licensed practitioner or person holding a multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2 and shall not be disclosed by a practitioner. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A confidential consent agreement shall be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A certified, registered or licensed practitioner who has entered into two confidential consent agreements involving a standard of care violation, within the 10-year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the presumption that the disciplinary action be made public.

15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the

examination shall constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.

1988, c. 765; 1992, cc. 659, 890; 1997, cc. 439, 564; 1998, c. 469; 2002, cc. 455, 698; 2003, cc. 753, 762; 2004, cc. 49, 64; 2009, cc. 472, 534; 2010, c. 414; 2014, c. 426; 2016, c. 82.

§ 54.1-2400.01. Certain definition

As used in this subtitle, "laser surgery" means treatment through revision, destruction, incision or other structural alteration of human tissue using laser technology. Under this definition, the continued use of laser technology solely for nonsurgical purposes of examination and diagnosis shall be permitted for those professions whose licenses permit such use.

1997, c. 569.

§ 54.1-2400.01:1. Surgery defined; who may perform surgery

A. For the purposes of this subtitle, except as used in Chapter 38 (§ 54.1-3800 et seq.) related to veterinary medicine, "surgery" means the structural alteration of the human body by the incision or cutting into of tissue for the purpose of diagnostic or therapeutic treatment of conditions or disease processes by any instrument causing localized alteration or transposition of live human tissue, but does not include the following: procedures for the removal of superficial foreign bodies from the human body, punctures, injections, dry needling, acupuncture, or removal of dead tissue. For the purposes of this section, incision shall not mean the scraping or brushing of live tissue.

B. No person shall perform surgery unless he is (i) licensed by the Board of Medicine as a doctor of medicine, osteopathy, or podiatry; (ii) licensed by the Board of Dentistry as a doctor of dentistry; (iii) jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner; (iv) a physician assistant acting under the supervision of a doctor of medicine, osteopathy, or podiatry; (v) a licensed midwife in the performance of episiotomies during childbirth; or (vi) acting pursuant to the orders and under the appropriate supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.

C. Nothing in this section shall be construed to restrict, limit, change, or expand the scope of practice in effect on January 1, 2012, of any profession licensed by any of the health regulatory boards within the Department of Health Professions.

2012, cc. 15, 124.

§ 54.1-2400.02. Information concerning health professionals; posting of addresses on the Internet; providing personal information under certain circumstances prohibited; collection of address information from health professionals

A. In order to protect the privacy and security of health professionals, the posting of addresses to the on-line licensure lookup or any successor in interest thereof shall only disclose the city or county provided to the Department and shall not include any street, rural delivery route, or post

office address. However, the street address of facilities regulated by the Boards of Funeral Directors and Embalmers, Nursing, Pharmacy, and Veterinary Medicine shall be posted.

B. The Department shall collect an official address of record from each health professional licensed, registered, or certified by a health regulatory board within the Department, to be used by the Department and relevant health regulatory boards for agency purposes, including workforce planning and emergency contact pursuant to § 54.1-2506.1. Such official address of record shall otherwise remain confidential, shall not be provided to any private entity for resale to another private entity or to the public, and shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.).

C. In addition, the Department shall provide an opportunity for the health professional to provide a second address, for the purpose of public dissemination. Health professionals may choose to provide a work address, a post office box, or a home address as the public address. In collecting such public address information, the Department shall notify health professionals that this address may be publicly disclosed, and is subject to the Freedom of Information Act (§ 2.2-3700 et seq.). Notwithstanding the provisions of subsection B, if a health professional does not provide a second address, his official address of record shall also be used as the public address for the purpose of public dissemination.

D. The Department shall develop a procedure for health professionals to update their address information at regular intervals, and may charge a fee sufficient to cover the costs for such updates.

2003, c. 310; 2009, c. 687.

§ 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 involuntary admission of the client under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

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 18.

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 18, 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.

1994, c. 958; 1997, c. 901; 2005, c. 716; 2010, cc. 778, 825.

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

A. Any reports, information or records received and maintained by the Department of Health Professions or 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. The Department of Health Professions or 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, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;

2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession, including the coordinated licensure information system, as defined in § 54.1-3030;

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 for good cause arising from extraordinary circumstances being shown;

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; or

6. To the Health Practitioners' Monitoring Program within the Department of Health Professions in connection with health practitioners who apply to or participate in the Program.

B. In no event shall confidential information received, maintained or developed by the Department of Health Professions or any board, or disclosed by the Department of Health Professions or a board to others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence in any civil action. 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. 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 criminal law, including the laws 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.

E. 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.

F. This section shall not prohibit the Director of the Department of Health Professions, following consultation with the relevant health regulatory board president or his designee, from disclosing information about a suspected violation of state or federal law or regulation to other agencies within the Health and Human Resources Secretariat or to federal law-enforcement agencies having jurisdiction over the suspected violation or requesting an inspection or investigation of a licensee by such state or federal agency when the Director has reason to believe that a possible violation of federal or state law has occurred. Such disclosure shall not exceed the minimum information necessary to permit the state or federal agency having jurisdiction over the suspected violation of state or federal law to conduct an inspection or investigation. Disclosures by the Director pursuant to this subsection shall not be limited to requests for inspections or investigations of licensees. Nothing in this subsection shall require the Director to make any disclosure. Nothing in this section

shall permit any agency to which the Director makes a disclosure pursuant to this section to re-disclose any information, reports, records, or materials received from the Department.

G. Whenever a complaint or report has been filed about a person licensed, certified, or registered by a health regulatory board, the source and the subject of a complaint or report shall be provided information about the investigative and disciplinary procedures at the Department of Health Professions. Prior to interviewing a licensee who is the subject of a complaint or report, or at the time that the licensee is first notified in writing of the complaint or report, whichever shall occur first, the licensee shall be provided with a copy of the complaint or report and any records or supporting documentation, unless such provision would materially obstruct a criminal or regulatory investigation. If the relevant board concludes that a disciplinary proceeding will not be instituted, the board may send an advisory letter to the person who was the subject of the complaint or report. The relevant board may also inform the source of the complaint or report (i) that an investigation has been conducted, (ii) that the matter was concluded without a disciplinary proceeding, (iii) of the process the board followed in making its determination, and (iv), if appropriate, that an advisory letter from the board has been communicated to the person who was the subject of the complaint or report. In providing such information, the board shall inform the source of the complaint or report that he is subject to the requirements of this section relating to confidentiality and discovery.

H. Orders and notices of the health regulatory boards relating to disciplinary actions, other than confidential exhibits described in subsection K, shall be disclosed. Information on the date and location of any disciplinary proceeding, allegations against the respondent, and the list of statutes and regulations the respondent is alleged to have violated shall be provided to the source of the complaint or report by the relevant board prior to the proceeding. The source shall be notified of the disposition of a disciplinary case.

I. This section shall not prohibit investigative staff authorized under § 54.1-2506 from interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or reviewing with fact witnesses any portion of records or other supporting documentation necessary to refresh the fact witnesses' recollection.

J. 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.

K. In disciplinary actions in which a practitioner is or may be unable to practice with reasonable skill and safety to patients and the public because of a mental or physical disability, a health regulatory board shall consider whether to disclose and may decide not to disclose in its notice or order the practitioner's health records, as defined in § 32.1-127.1:03, or his health services, as defined in § 32.1-127.1:03. Such information may be considered by the relevant board in a closed hearing in accordance with subsection A 15 of § 2.2-3711 and included in a confidential exhibit to a notice or order. The public notice or order shall identify, if known, the practitioner's mental or

physical disability that is the basis for its determination. In the event that the relevant board, in its discretion, determines that this subsection should apply, information contained in the confidential exhibit shall remain part of the confidential record before the relevant board and is subject to court review under the Administrative Process Act (§ 2.2-4000 et seq.) and to release in accordance with this section.

1997, c. 698; 1998, c. 744; 1999, c. 888; 2003, cc. 753, 762; 2004, c. 49; 2006, cc. 155, 184; 2007, c. 395; 2009, cc. 342, 472; 2015, c. 114; 2016, c. 222.

§ 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 for each of the health regulatory boards 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. Further, the report shall specify the number of cases for each profession regulated by a health regulatory board by category of violation, including, but not limited to, standard of care violations, in which (i) a sanction was imposed; (ii) a confidential consent agreement was accepted; and (iii) more than two confidential consent agreements involving a standard of care violation were accepted by the relevant board for the same practitioner in a 10-year period. 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.

The Director shall also include in the Department's biennial report for each health regulatory board (i) case processing time standards for resolving disciplinary cases, (ii) an analysis of the percentage of cases resolved during the last two fiscal years that did not meet such standards, (iii) a six-year trend analysis of the time required to process, investigate, and adjudicate cases, and (iv) a detailed reporting of staffing levels for the six-year period for each job classification that supports the disciplinary process. However, the initial biennial report shall require a four-year trend analysis of the time required to process, investigate, and adjudicate cases and a detailed reporting of staffing levels for the four-year period for each job classification that supports the disciplinary process.

1997, c. 698; 1998, c. 744; 2003, cc. 753, 762.

§ 54.1-2400.4. Mental health service providers duty to inform; immunity; civil penalty

A. Any mental health service provider, as defined in § 54.1-2400.1, shall, upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, advise his patient of his right to report such misconduct to the Department of Health Professions, hereinafter referred to as the "Department."

B. The mental health service provider shall provide relevant information to the patient, including, but not limited to, the Department's toll-free complaint hotline number for consumer complaints and written information, published by the Department of Health Professions, explaining how to file a report. The mental health service provider shall document in the patient's record the alleged misconduct, the category of licensure or certification, and approximate dates of treatment, if known, of the mental health service provider who will be the subject of the report, and the action taken by the mental health service provider to inform the patient of his right to file a complaint with the Department of Health Professions.

C. Any mental health service provider informing a patient of his right to file a complaint against a regulated person and providing the information required by this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

D. Notwithstanding any other provision of law, any person required to inform a patient of his right to file a complaint against a regulated person pursuant to this section who fails to do so shall be subject to a civil penalty not to exceed $100.

2000, c. 578.

§ 54.1-2400.5. Suspension of license, certificate, registration or other authorization issued by a health regulatory board upon delinquency; procedure; reinstatement

A. An obligee may notify an obligor who is alleged to be in default or delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship or work-conditional grant that (i) the obligor has 30 days from the date of receipt of the notice to pay the alleged delinquency or to reach an agreement with the obligee to pay such delinquency and (ii) if payment is not made or an agreement cannot be reached within that time, a petition will be filed by the obligee seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by a health regulatory board within the Department of Health Professions pursuant to this title. The notice shall be sent by certified mail, with proof of actual receipt required.

B. Upon the expiration of 30 days' notice to an obligor who is alleged to be in default or delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship, an obligee may petition the circuit court in the jurisdiction in which the obligor resides for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by any health regulatory board within the Department of Health Professions pursuant to this title.

C. The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (i) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in

collection of the delinquency or (ii) the obligor has made a good-faith effort to reach an agreement with the obligee.

D. If the court finds that (i) none of the conditions provided in subsection C apply, (ii) the obligor is delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship, and (iii) he holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation issued by any health regulatory board within the Department of Health Professions pursuant to this title, it shall order suspension of such license, certificate, registration or authority and shall provide a copy of such order to the relevant health regulatory board within the Department of Health Professions.

Any court order for suspension issued pursuant to this section shall require the obligor to surrender any license, certificate, registration or other such authorization to the relevant health regulatory board within 90 days of the date on which the order is entered.

E. If, at any time after entry of the court order for suspension pursuant to subsection D, the obligor (i) pays the delinquency or (ii) reaches an agreement with the obligee to pay the delinquency and makes at least one payment pursuant to the agreement, then, upon proof of the payment or agreement to pay and at least one payment, the court shall rescind the order and, if the obligor has surrendered any license, certificate, registration or other such authorization, shall order reinstatement of the suspended credential. Such payment shall be proved by notarized statement of payment signed by the obligee.

F. No fee shall be charged by any health regulatory board to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

G. The procedure set forth in this section shall be in addition to and not in lieu of any existing or future remedies available to an obligee to collect a delinquent debt from an obligor alleged to be delinquent.

2003, c. 975.

§ 54.1-2400.6. Hospitals, other health care institutions, home health and hospice organizations, and assisted living facilities required to report disciplinary actions against and certain disorders of health professionals; immunity from liability; failure to report

A. The chief executive officer and the chief of staff of every hospital or other health care institution in the Commonwealth, the director of every licensed home health or hospice organization, the director of every accredited home health organization exempt from licensure, and the administrator of every licensed assisted living facility in the Commonwealth shall report within 30 days, except as provided in subsection B, to the Director of the Department of Health Professions, or in the case of a director of a home health or hospice organization, to the Office of Licensure and Certification at the Department of Health (the Office), the following information regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licen-

sure privilege to practice nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

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 any other health care institution, for treatment of substance abuse or a psychiatric illness that 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, after reasonable investigation and consultation as needed with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that there is a reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. The report required under this subdivision shall be submitted within 30 days of the date that the chief executive officer, chief of staff, director, or administrator determines that a reasonable probability exists.

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

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

5. The voluntary resignation from the staff of the health care institution, home health or hospice organization, or assisted living facility, or voluntary restriction or expiration of privileges at the institution, organization, or facility of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution, organization, or facility or a committee thereof for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, 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 Director of the Department of Health Professions or to the Director of the Office of Licensure and Certification at the Department of Health, 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. The report shall include the names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of individuals from whom the hospital or health care institution, organization, or facility sought information to substantiate the facts required to be reported. All relevant medical records shall be attached to the report if patient care or the health professional's health status is at issue. The reporting hospital, health care institution, home health or hospice organization, or assisted living facility shall also provide notice to the Department or the Office that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital, health care institution, home health or hospice organization, or assisted living facility shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

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

B. 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 executive officer, chief of staff, director, or administrator learns of such commitment or admission.

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

D. Any person making a report by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune

from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

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

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

Code 1950, § 32-137.1; 1977, c. 639; 1978, c. 541, § 54-325.1; 1979, cc. 720, 727; 1986, cc. 303, 434; 1988, c. 765, § 54.1-2906; 1994, c. 234; 2000, c. 77; 2003, cc. 456, 753, 762; 2004, cc. 49, 64; 2011, c. 463; 2015, c. 119.

§ 54.1-2400.7. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability

A. Every practitioner in the Commonwealth who is registered, certified, or licensed by a health regulatory board or who holds a multistate licensure privilege to practice nursing who treats professionally any person registered, certified, or licensed by a health regulatory board or who holds a multistate licensure privilege shall report, unless exempted by subsection C hereof, to the Director of the Department of Health Professions 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 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 that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

Code 1950, § 54-317.2; 1966, c. 166; 1973, c. 529, § 54-317.3; 1974, c. 555; 1977, c. 639; 1978, c. 541; 1986, c. 434; 1988, c. 765, § 54.1-2907; 1996, cc. 937, 980; 2004, cc. 49, 64.

§ 54.1-2400.8. Immunity for reporting

In addition to the immunity for reporting as provided by §§ 54.1-2400.6 and 54.1-2400.7, any person (i) making a report regarding the conduct or competency of a health care practitioner as required by law or regulation, (ii) making a voluntary report to the appropriate regulatory board or to the Department of Health Professions regarding the unprofessional conduct or competency of any practitioner licensed, certified, or registered by a health regulatory board, or (iii) providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such reports shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

2004, c. 64; 2005, c. 932.

§ 54.1-2401. Monetary penalty

Any person licensed, registered or certified or issued a multistate licensure privilege 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 $5,000 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.

1980, c. 678, § 54-961; 1988, c. 765; 1992, c. 659; 1997, c. 564; 2003, cc. 753, 762; 2004, c. 49.

§ 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.

1986, c. 464, § 54-950.3; 1988, cc. 66, 765.

§ 54.1-2402.1. (Effective until October 1, 2016) 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 subsection B of § 2.2-108. 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.

1988, c. 42, § 54-950.4.

§ 54.1-2402.1. (Effective October, 1, 2016) 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 subsection A of § 2.2-108. 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.

1988, c. 42, § 54-950.4.

§ 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.

1987, c. 199, § 54-959.1; 1988, c. 765.

§ 54.1-2403.01. Routine component of prenatal care

A. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall inform every pregnant woman who is his patient that human immunodeficiency virus (HIV) screening is recommended for all pregnant patients and that she will receive an HIV test as part of the routine panel of prenatal tests unless she declines (opt-out screening). The practitioner shall offer the pregnant woman oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meaning of positive and negative test results. The confidentiality provisions of § 32.1-36.1, test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant women with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control and Prevention recommendations for HIV-positive pregnant women. Any pregnant woman shall have the right to refuse testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.

B. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, upon receipt of a positive test result from a prenatal test for Down syndrome or other prenatally diagnosed conditions performed on a patient, the health care provider involved may provide the patient with information about the Virginia Department of Health genetics program website and shall provide the patient with up-to-date, scientific written information concerning the life expectancy, clinical course, and intellectual and functional development and treatment options for an unborn child diagnosed with or child born with Down syndrome or other prenatally diagnosed conditions. He may also provide a referral to support services providers, including information hotlines specific to Down syndrome or other prenatally diagnosed conditions, resource centers or clearinghouses, and other education and support programs. For the purposes of this section, "prenatally diagnosed condition" means any fetal health condition identified by prenatal genetic testing or prenatal screening procedures.

1995, c. 309; 2004, c. 49; 2007, cc. 780, 822; 2008, c. 641.

§ 54.1-2403.02. Prenatal education; cord blood banking

Every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall, prior to the beginning of his patient's third trimester of pregnancy or, if later, at the first visit of such pregnant woman to the provider, make available to the patient information developed pursuant to subsection A of § 32.1-69.4 relating to the women's options with respect to umbilical cord blood banking.

2010, c. 69.

§ 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, including any holder of a multistate licensure privilege to practice nursing, 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.

1992, c. 428; 2004, c. 49.

§ 54.1-2403.2. Record storage

A. Health records, as defined in § 32.1-127.1:03, 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, registered or issued a multistate licensure privilege by a health regulatory board within the Department shall not be required to maintain paper copies of health 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 health 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 health 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.

1994, c. 390; 1998, c. 470; 2004, c. 49; 2012, c. 336.

§ 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.

1995, c. 754; 1997, c. 682; 1998, c. 470.

§ 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 (§ 38.2-4300 et seq.) 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.

1990, c. 590 .

§ 54.1-2405. Transfer of patient records in conjunction with closure, sale, or relocation of practice; notice required

A. 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 closure, sale or relocation 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, as specified in § 8.01-324.

The notice shall specify that, at the written request of the patient or an authorized representative, the records or copies will be sent, within a reasonable time, to any other like-regulated provider of the patient's choice or provided to the patient pursuant to § 32.1-127.1:03. The notice shall also disclose whether any charges will be billed by the provider for supplying the patient or the provider chosen by the patient with the originals or copies of the patient's records. Such charges shall not exceed the actual costs of copying and mailing or delivering the records.

B. For the purposes of this section:

"Current patient" means a patient who has had a patient encounter with the provider or his professional practice during the two-year period immediately preceding the date of the record transfer.

"Relocation of a professional practice" means the moving of a practice located in Virginia from the location at which the records are stored at the time of the notice to another practice site that is located more than 30 miles away or to another practice site that is located in another state or the District of Columbia.

1992, c. 759; 2003, cc. 912, 917; 2004, c. 53.

§ 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.

1992, c. 808 .

§ 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.

1992, c. 603 .

§ 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 for any reason other than nonrenewal by another jurisdiction, 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, except as may be necessary to license a nurse eligible for reinstatement in another party state as consistent with the Nurse Licensure Compact.

1993, c. 991; 2010, c. 414; 2014, c. 76.

§ 54.1-2408.1. Summary action against licenses, certificates, registrations, or multistate licensure privilege; allegations to be in writing

A. Any health regulatory board may suspend the license, certificate, registration, permit, or multistate licensure privilege of any person holding a license, certificate, registration, permit, or licensure privilege 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, registration, permit, or licensure privilege 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. Any health regulatory board may restrict the license, certificate, registration, permit, or multistate licensure privilege of any person holding a license, certificate, registration, permit, or licensure privilege issued by it without proceeding simultaneously with notification of an informal conference pursuant to §§ 2.2-4019 and 54.1-2400, if the relevant board finds that there is a substantial danger to the public health or safety that warrants this action. A board may meet by telephone conference call when summarily restricting a license, certificate, registration, permit, or licensure privilege 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. The informal conference shall be scheduled within a reasonable time of the date of the summary restriction.

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

1997, c. 556; 2004, c. 49; 2007, c. 22; 2013, c. 765.

§ 54.1-2408.2. Minimum period for reinstatement after revocation

When the certificate, registration or license of any person certified, registered or licensed by one of the health regulatory boards has been revoked, the board may, after three years and upon the payment of a fee prescribed by the board, consider an application for reinstatement of a certificate, registration or license in the same manner as the original certificates, registrations or licenses are granted; however, if a license has been revoked pursuant to subdivision A 19 of § 54.1-2915, the board shall not consider an application for reinstatement until five years have passed since revocation. A board shall conduct an investigation and review an application for reinstatement after revocation to determine whether there are causes for denial of the application. The burden of proof shall be on the applicant to show by clear and convincing evidence that he is safe and competent to practice. The reinstatement of a certificate, registration or license shall require the affirmative vote of three-fourths of the members at the hearing. In the discretion of the board, such reinstatement may be granted without further examination.

2003, cc. 753, 762; 2013, c. 365; 2014, cc. 11, 96.

§ 54.1-2408.3. Practice pending appeal

Any practitioner or entity whose license, certificate, registration, or permit is suspended or revoked by a health regulatory board of the Department of Health Professions shall not engage in practice in the Commonwealth pending appeal of the board's order.

2013, c. 115.

§ 54.1-2409. Mandatory suspension or revocation; reinstatement; hearing for reinstatement

A. Upon receipt of documentation by any court or government agency 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 for reasons other than nonrenewal or accepted for surrender in lieu of disciplinary action 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 incapacitated, 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, conservator, 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 documentation from such court or agency, certified by the Director as the documentation 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.

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

C. 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.

D. 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 60 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 Board may consider other information concerning possible violations of Virginia law at such hearing, if reasonable notice is given to such person of the information.

The reinstatement of the applicant's license, certificate, or registration shall require the affirmative vote of three-fourths of the members of the board at the hearing. 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.

E. Pursuant to the authority of the Board of Nursing provided in Chapter 30 (§ 54.1-3000 et seq.) of this title, the provisions of this section shall apply, mutatis mutandis, to persons holding a multistate licensure privilege to practice nursing.

1993, c. 991; 1997, c. 801; 2002, c. 455; 2004, c. 49; 2006, c. 367; 2010, c. 414; 2014, c. 76.

§ 54.1-2409.1. Criminal penalties for practicing certain professions and occupations without appropriate license

Any person who, without holding a current valid license or multistate licensure privilege, issued by a regulatory board pursuant to this title (i) performs an invasive procedure for which a license or multistate licensure privilege is required; (ii) administers, prescribes, sells, distributes, or dispenses a controlled drug; or (iii) practices a profession or occupation after having his license or multistate licensure privilege to do so suspended or revoked shall be guilty of a Class 6 felony.

1994, c. 722; 2004, c. 49.

§ 54.1-2409.2. Board to set criteria for determining need for professional regulation

The Board of Health Professions shall study and prepare a report for submission to the Governor and the General Assembly by October 1, 1997, containing its findings and recommendations on the appropriate criteria to be applied in determining the need for regulation of any health care occupation or profession. Such criteria shall address at a minimum the following principles:

1. Promotion of effective health outcomes and protection of the public from harm.

2. Accountability of health regulatory bodies to the public.

3. Promotion of consumers' access to a competent health care provider workforce.

4. Encouragement of a flexible, rational, cost-effective health care system that allows effective working relationships among health care providers.

5. Facilitation of professional and geographic mobility of competent providers.

6. Minimization of unreasonable or anti-competitive requirements that produce no demonstrable benefit.

The Board in its study shall analyze and frame its recommendations in the context of the total health care delivery system, considering the current and changing nature of the settings in which health care occupations and professions are practiced. It shall recognize in its recommendations the interaction of the regulation of health professionals with other areas of regulation including, but not limited to, the following:

1. Regulation of facilities, organizations, and insurance plans;

2. Health delivery system data;

3. Reimbursement issues;

4. Accreditation of education programs; and

5. Health workforce planning efforts.

The Board in its study shall review and analyze the work of publicly and privately sponsored studies of reform of health care workforce regulation in other states and nations. In conducting its

study the Board shall cooperate with the state academic health science centers with accredited professional degree programs.

1996, c. 532.

§ 54.1-2409.3. Participation of advisory boards in disciplinary proceedings

Notwithstanding any provision of law to the contrary, whenever a disciplinary proceeding involves a respondent who holds a license or certificate authorizing the practice of a profession represented by a statutorily created advisory board whose members are appointed by the Governor, a member of such advisory board shall sit as a full voting member on any special conference committee, informal fact-finding panel, or formal hearing panel pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2 and § 54.1-2400 or 54.1-2408.2.

2002, c. 698; 2013, c. 144.

§ 54.1-2409.4. Authority to receive laboratory results directly

A. Any health care practitioner licensed under this title who, within the scope of his practice, orders a laboratory test or other examination of the physical condition of any person shall, if so requested by the patient or his legal guardian, provide a copy of the report of the results to the patient or his legal guardian, unless, in the professional opinion of the health care practitioner, there is a medical reason not to do so.

B. The health care practitioner, at his sole discretion, may authorize the laboratory to provide a copy of the report of the results directly to the patient or his legal guardian. The patient or his legal guardian shall then be considered authorized to receive the report or result for the purposes of the federal Clinical Laboratory Improvement Amendments.

C. With the prior authorization of the patient, a laboratory may, contemporaneously with, or subsequent to, furnishing the report to the ordering health care practitioner, provide a copy of the report of the results directly to the insurance carrier, health maintenance organization, or self-insured plan that provides health insurance or similar coverage to the patient. The insurance carrier, health maintenance organization, or self-insured plan shall then be considered authorized to receive the report or result for the purposes of the federal Clinical Laboratory Improvement Amendments.

2007, cc. 887, 930; 2011, cc. 807, 849.

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, including assisted living facilities as defined in § 63.2-100, 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.

1993, c. 869; 2000, c. 201.

§ 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 subsections D or E of this section or of subsections D or E of § 54.1-2413, 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 90 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 (§ 2.2-4000 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.

E. In addition, a practitioner may refer a patient to such practitioner's immediate family member or such immediate family member's office or group practice for health services if all of the following conditions are met:

1. The health services to be received by the patient referred by the practitioner are within the scope of practice of the practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice;

2. The practitioner's immediate family member or the treating practitioner within such immediate family member's office or group practice is qualified and duly licensed to provide the health services to be received by the patient referred to the practitioner;

3. The primary purpose of any such referral is to obtain the appropriate professional health services for the patient being referred, which are to be rendered by the referring practitioner's immediate family member or by the treating practitioner within such immediate family member's office or group practice who is qualified and licensed to provide such professional health services; and

4. The primary purpose of the referral shall not be for the provision of designated health services as defined in 42 U.S.C. § 1395nn and the regulations promulgated thereunder.

1993, c. 869; 2005, c. 402.

§ 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 (§ 2.2-4000 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 subsection B of § 54.1-2411;

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, 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.

1993, c. 869 .

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

A. No hospital licensed in the 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.

E. Notwithstanding the provisions of this chapter, a referral to an entity in which the referring practitioner or his immediate family member is an investor shall not be in violation of this chapter if (i) the health service to be provided is a designated health service as defined in 42 U.S.C. § 1395nn (h)(6), as amended, and an exception authorized by 42 U.S.C. § 1395nn, as amended, or any regulations adopted pursuant thereto, applies, or (ii) the health service to be provided is not a designated health service as defined in 42 U.S.C. § 1395nn (h)(6), as amended, but would qualify for an exception authorized by 42 U.S.C. § 1395nn, as amended, or any regulations adopted pursuant thereto, if the health service were a designated health service.

1993, c. 869; 2005, c. 402; 2010, c. 743.

§ 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.

1993, c. 869 .

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.

1977, c. 579, § 54-950; 1980, c. 678; 1983, c. 115; 1985, c. 448; 1986, c. 564; 1987, c. 686; 1988, c. 765.

§ 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.

1977, c. 579, § 54-950.1; 1984, c. 720; 1986, c. 564; 1988, c. 765.

§ 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.

1986, c. 564, § 54-960.1; 1988, c. 765.

§ 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 Counseling, Board of Dentistry, Board of Funeral Directors and Embalmers, Board of Long-Term Care Administrators, Board of Medicine, Board of Nursing, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Social Work and Board of Veterinary Medicine.

1977, c. 579, § 54-950.2; 1980, c. 678; 1983, c. 115; 1987, c. 686; 1988, c. 765; 1992, cc. 706, 841; 1993, c. 869; 2000, cc. 473, 688; 2005, cc. 610, 924.

§ 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.

1986, c. 564, § 54-954.1; 1988, c. 765.

§ 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 29 (§ 2.2-2900 et seq.) of Title 2.2 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 health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and Board of Health Professions shall be paid. Such fees shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Monitoring Program, and the Department and Board of Health Professions and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2;

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' Monitoring 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, including the laws 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. Upon request and affidavit from an attorney for the Commonwealth, the Director shall provide documents material to a criminal investigation of a person licensed by a health regulatory board; however, peer review documents shall not be released and shall remain privileged pursuant to § 8.01-581.17. 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 (§ 2.2-4000 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board;

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

20. To establish, and revise as necessary, with such federal funds, grants, or general funds as may be appropriated or made available for this program, the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of this title; and

21. To assess a civil penalty against any person who is not licensed by a health regulatory board for failing to report a violation pursuant to § 54.1-2400.6 or § 54.1-2909.

1977, c. 579, § 54-955; 1980, c. 678; 1983, c. 528; 1986, c. 564; 1988, cc. 266, 765; 1997, c. 439; 2002, c. 481; 2003, cc. 753, 762; 2004, c. 64; 2006, c. 631; 2009, c. 472.

§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel and Director

A. 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 to request and obtain patient records, business records, papers, and physical or other evidence in the course of any investigation or to issue subpoenas requiring the production of such evidence.

B. 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, (iii) request and receive criminal history information under the provisions of § 19.2-389, and (iv) request and receive social security numbers from practitioners or federal employee identification numbers from facilities.

C. The Director shall have the authority to issue summonses for violations of statutes and regulations governing the unlicensed practice of professions regulated by the Department. The Director may delegate such authority to investigators appointed by him. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

1980, c. 678, § 54-960; 1986, c. 564; 1988, c. 765; 1993, c. 869; 2003, cc. 753, 762; 2008, c. 37; 2011, c. 50.

§ 54.1-2506.01. Investigation of reported violations

The Department shall investigate all complaints that are within the jurisdiction of the relevant health regulatory board received from (i) the general public and (ii) all reports received pursuant to §§ 54.1-2400.6, 54.1-2400.7, 54.1-2709.3, 54.1-2709.4, 54.1-2908, or § 54.1-2909.

2003, cc. 753, 762; 2004, c. 64.

§ 54.1-2506.1. Submission of required information

A. The Department is authorized to require individuals applying for initial licensure, certification, or registration, and individuals who are licensed, certified, or registered by a health regulatory board to provide information in addition to that which is required to determine the individual's qualifications. Such additional information shall include identification of the individual's self-designated specialties and subspecialties; credentials and certifications issued by professional associations, institutions and boards; and locations of each practice site, number of hours spent practicing at each practice site location, and demographic information. The Department, in consultation with the health regulatory boards, may establish criteria to identify additional data elements deemed necessary for workforce and health planning purposes. Such information shall be collected and maintained by the Department for workforce and health 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 person's name or other individual identifiers;

however, the Department may release any information that identifies specific individuals for the purpose of determining shortage designations and to qualified personnel if pertinent to an investigation, research, or study, provided a written agreement between such qualified personnel and the Department, which ensures that any person to whom such identities are divulged shall preserve the confidentiality of those identities, is executed. Prior to collecting any information described in this section from individuals, the Department shall first attempt to obtain from other sources information sufficient for workforce planning purposes.

B. For the purpose of expediting the dissemination of public health information, including notice about a public health emergency, the Department is authorized to require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency or to provide information related to serving during a public health emergency. In the event of an animal health emergency, the Department shall provide to the State Veterinarian the email addresses, telephone numbers and facsimile numbers that may be used to contact licensed veterinarians.

Such email addresses, telephone numbers and facsimile numbers shall not be published, released or made available for any other purpose by the Department, the Department of Health, or the State Veterinarian.

The Director, in consultation with the Department of Health and the Department of Emergency Management, shall adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting.

1994, c. 853; 1997, c. 806; 2003, c. 602; 2005, c. 55; 2009, c. 382.

§ 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.

1995, c. 738.

§ 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 or terms concurrent with their terms as members of health regulatory boards, whichever is less.

1977, c. 579, § 54-951; 1985, c. 448; 1986, c. 564; 1988, c. 765; 2016, c. 105.

§ 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 annually 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.

1977, c. 579, § 54-953; 1980, c. 678; 1986, c. 564; 1988, c. 765; 2012, c. 361.

§ 54.1-2509. Reimbursement of Board members for expenses

All members of the Board shall be compensated in accordance with § 2.2-2813 from the funds of the Department.

1977, c. 579, § 54-954; 1980, cc. 678, 728; 1986, c. 564; 1988, c. 765.

§ 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 of this subtitle; and

15. To take appropriate actions against entities, other than practitioners, for violations of Chapter 24.1 of this subtitle.

1977, c. 579, § 54-955.1; 1980, c. 678; 1984, cc. 447, 720, 734; 1986, c. 564; 1988, c. 765; 1993, c. 869 .

Chapter 25.1 - HEALTH PRACTITIONERS' MONITORING PROGRAM

§ 54.1-2515. Definitions

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

"Committee" means the Health Practitioners' Monitoring Program Committee as described in § 54.1-2517.

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

"Disciplinary action" means any proceeding that may lead to a monetary penalty or probation or to a reprimand, restriction, revocation, suspension, denial, or other order relating to the license, certificate, registration, or multistate privilege of a health care practitioner issued 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.

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

"Program" means the Health Practitioners' Monitoring Program established pursuant to § 54.1-2516.

1997, c. 439; 2009, c. 472; 2016, c. 105.

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

A. The Director of the Department of Health Professions shall maintain a health practitioners' monitoring program that provides an alternative to disciplinary action for impaired health practitioners. 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 Health Practitioners' Monitoring Program Committee, enter into contracts as may be necessary for the implementation of monitoring services. Such services may include education, assessment, referral for intervention and treatment, and monitoring of impaired practitioners. If the Director enters into an agreement with another agency of the Commonwealth pursuant to this section, that agency shall be immune from liability resulting from the good faith exercise of its obligations under the agreement.

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. However, this section shall not prohibit the Committee from charging participants a reasonable portion of a fee related to the costs of participation in the Program. No participant shall be denied entry into the Program due to the inability to pay a portion of the costs related to participation.

Any monitoring program for individuals licensed or certified by the Board of Medicine, and any contract for the implementation of monitoring 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 Committee.

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

4. The practitioner remains in compliance with the terms of his contract with the Committee.

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

1997, c. 439; 2009, c. 472.

§ 54.1-2517. Health Practitioners' Monitoring Program Committee; certain meetings, decisions to be excepted from the Freedom of Information Act; confidentiality of records; immunity from liability

A. The Health Practitioners' Monitoring Program Committee shall consist of nine persons appointed by the Director to advise and assist in the operation of the Program, of whom eight shall be licensed, certified, or registered practitioners and one shall be a citizen member. Of the members who are licensed, certified, or registered practitioners, at least one shall be licensed to practice medicine or osteopathy in Virginia and engaged in active clinical practice, at least one shall be a registered nurse engaged in active practice, and all shall be knowledgeable about impairment and rehabilitation, particularly as related to the monitoring of health care practitioners. The 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;

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

6. To assist the Director in carrying out the provisions of this chapter.

B. Records of the Program, to the extent such records identify individual practitioners in the Program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used only in the exercise of the proper functions 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, 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 and of subdivision 11 of § 2.2-3705.5, the Committee may disclose such records relative to an impaired practitioner only:

1. When disclosure of the information is essential to the monitoring 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 24 of § 2.2-3711, 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 (§ 2.2-3700 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.

1997, c. 439; 1999, cc. 703, 726; 2004, c. 690; 2009, c. 472; 2016, c. 105.

§ 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.

1997, c. 439.

Chapter 25.2 - PRESCRIPTION MONITORING PROGRAM

§ 54.1-2519. Definitions

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

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by (i) a practitioner or, under the practitioner's direction, his authorized agent or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Bureau" means the Virginia Department of State Police, Bureau of Criminal Investigation, Drug Diversion Unit.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of this title.

"Covered substance" means all controlled substances included in Schedules II, III, and IV and all drugs of concern that are required to be reported to the Prescription Monitoring Program, pursuant to this chapter.

"Department" means the Virginia Department of Health Professions.

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

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

"Dispenser" means a person or entity that (i) is authorized by law to dispense a covered substance or to maintain a stock of covered substances for the purpose of dispensing, and (ii) dispenses the covered substance to a citizen of the Commonwealth regardless of the location of the dispenser, or who dispenses such covered substance from a location in Virginia regardless of the location of the recipient.

"Drug of concern" means any drug or substance, including any controlled substance or other drug or substance, where there has been or there is the potential for abuse and that has been identified by the Board of Pharmacy pursuant to § 54.1-3456.1.

"Prescriber" means a practitioner licensed in the Commonwealth who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription for a covered substance or a practitioner licensed in another state to so issue a prescription for a covered substance.

"Recipient" means a person who receives a covered substance from a dispenser.

"Relevant health regulatory board" means any such board that licenses persons or entities with the authority to prescribe or dispense covered substances, including, but not limited to, the Board of Dentistry, the Board of Medicine, and the Board of Pharmacy.

2002, c. 481; 2005, cc. 637, 678; 2014, c. 664.

§ 54.1-2520. Program establishment; Director's regulatory authority

A. The Director shall establish, maintain, and administer an electronic system to monitor the dispensing of covered substances to be known as the Prescription Monitoring Program. Covered

substances shall include all Schedule II, III, and IV controlled substances, as defined in the Drug Control Act (§ 54.1-3400 et seq.), and any other drugs of concern identified by the Board of Pharmacy pursuant to § 54.1-3456.1.

B. The Director, after consultation with relevant health regulatory boards, shall promulgate, in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), such regulations as are necessary to implement the prescription monitoring program as provided in this chapter, including, but not limited to, the establishment of criteria for granting waivers of the reporting requirements set forth in § 54.1-2521.

C. The Director may enter into contracts as may be necessary for the implementation and maintenance of the Prescription Monitoring Program.

D. The Director shall provide dispensers with a basic file layout to enable electronic transmission of the information required in this chapter. For those dispensers unable to transmit the required information electronically, the Director shall provide an alternative means of data transmission.

E. The Director shall also establish an advisory committee within the Department to assist in the implementation and evaluation of the Prescription Monitoring Program. Such advisory committee shall provide guidance to the Director regarding information disclosed pursuant to subdivision C 9 of § 54.1-2523.

2002, c. 481; 2005, cc. 637, 678; 2014, c. 664; 2016, cc. 410, 568.

§ 54.1-2521. Reporting requirements

A. The failure by any person subject to the reporting requirements set forth in this section and the Department's regulations to report the dispensing of covered substances shall constitute grounds for disciplinary action by the relevant health regulatory board.

B. Upon dispensing a covered substance, a dispenser of such covered substance shall report the following information:

1. The recipient's name and address.

2. The recipient's date of birth.

3. The covered substance that was dispensed to the recipient.

4. The quantity of the covered substance that was dispensed.

5. The date of the dispensing.

6. The prescriber's identifier number.

7. The dispenser's identifier number.

8. The method of payment for the prescription.

9. Any other non-clinical information that is designated by the Director as necessary for the implementation of this chapter in accordance with the Department's regulations.

10. Any other information specified in regulations promulgated by the Director as required in order for the Prescription Monitoring Program to be eligible to receive federal funds.

C. (Effective until January 1, 2017) The reports required herein shall be made and transmitted in such manner and format and according to the standards and schedule established in the Department's regulations.

C. (Effective January 1, 2017) The reports required herein shall be made to the Department or its agent within 24 hours or the dispenser's next business day, whichever comes later, and shall be made and transmitted in such manner and format and according to the standards and schedule established in the Department's regulations.

2002, c. 481; 2006, c. 167; 2012, cc. 21, 71; 2016, c. 309.

§ 54.1-2522. Reporting exemptions

The dispensing of covered substances under the following circumstances shall be exempt from the reporting requirements set forth in § 54.1-2521 :

1. Dispensing of manufacturers' samples of such covered substances or of covered substances dispensed pursuant to an indigent patient program offered by a pharmaceutical manufacturer.

2. Dispensing of covered substances by a practitioner of the healing arts to his patient in a bona fide medical emergency or when pharmaceutical services are not available.

3. Administering of covered substances.

4. Dispensing of covered substances within an appropriately licensed narcotic maintenance treatment program.

5. Dispensing of covered substances to inpatients in hospitals or nursing facilities licensed by the Board of Health or facilities that are otherwise authorized by law to operate as hospitals or nursing homes in the Commonwealth.

6. Dispensing of covered substances to inpatients in hospices licensed by the Board of Health.

7. Dispensing of covered substances by veterinarians to animals within the usual course of their professional practice.

8. Dispensing of covered substances as otherwise provided in the Department's regulations.

2002, c. 481.

§ 54.1-2522.1. (Effective until July 1, 2019) Requirements of prescribers

A. Any prescriber who is licensed in the Commonwealth to treat human patients and is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription for a covered substance shall be registered with the Prescription Monitoring Program by the Department of Health Professions.

B. A prescriber registered with the Prescription Monitoring Program or a person to whom he has delegated authority to access information in the possession of the Prescription Monitoring

Program pursuant to § 54.1-2523.2 shall, at the time of initiating a new course of treatment to a human patient that includes the prescribing of opioids anticipated at the onset of treatment to last more than 14 consecutive days, request information from the Director for the purpose of determining what, if any, other covered substances are currently prescribed to the patient. In addition, any prescriber who holds a special identification number from the Drug Enforcement Administration authorizing the prescribing of controlled substances approved for use in opioid addiction therapy shall, prior to or as a part of execution of a treatment agreement with the patient, request information from the Director for the purpose of determining what, if any, other covered substances the patient is currently being prescribed. Nothing in this section shall prohibit prescribers from making additional periodic requests for information from the Director as may be required by routine prescribing practices.

C. A prescriber shall not be required to meet the provisions of subsection B if:

1. The opioid is prescribed to a patient currently receiving hospice or palliative care;

2. The opioid is prescribed to a patient as part of treatment for a surgical or invasive procedure and such prescription is not refillable;

3. The opioid is prescribed to a patient during an inpatient hospital admission or at discharge;

4. The opioid is prescribed to a patient in a nursing home or a patient in an assisted living facility that uses a sole source pharmacy;

5. The Prescription Monitoring Program is not operational or available due to temporary technological or electrical failure or natural disaster; or

6. The prescriber is unable to access the Prescription Monitoring Program due to emergency or disaster and documents such circumstances in the patient's medical record.

2014, cc. 93, 178; 2015, c. 517; 2016, cc. 113, 406.

§ 54.1-2522.1. (Effective July 1, 2019) Requirements of prescribers

A. Any prescriber who is licensed in the Commonwealth to treat human patients and is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription for a covered substance shall be registered with the Prescription Monitoring Program by the Department of Health Professions.

B. Prescribers registered with the Prescription Monitoring Program shall, at the time of initiating a new course of treatment to a human patient that includes the prescribing of benzodiazepine or an opiate anticipated at the onset of treatment to last more than 90 consecutive days, request information from the Director for the purpose of determining what, if any, other covered substances are currently prescribed to the patient. In addition, any prescriber who holds a special identification number from the Drug Enforcement Administration authorizing the prescribing of controlled substances approved for use in opioid addiction therapy shall, prior to or as a part of execution of a treatment agreement with the patient, request information from the Director for the purpose of determining what, if any, other covered substances the patient is currently being prescribed.

Nothing in this section shall prohibit prescribers from making additional periodic requests for information from the Director as may be required by routine prescribing practices.

C. The Secretary of Health and Human Resources may identify and publish a list of benzodiazepines or opiates that have a low potential for abuse by human patients. Prescribers who prescribe such identified benzodiazepines or opiates shall not be required to meet the provisions of subsection B. In addition, a prescriber shall not be required to meet the provisions of subsection B if the course of treatment arises from pain management relating to dialysis or cancer treatments.

2014, cc. 93, 178; 2015, c. 517.

§ 54.1-2522.2. Requirements for dispensers

The Department shall register every dispenser licensed by the Board of Pharmacy pursuant to Article 3 (§ 54.1-3310 et seq.) of Chapter 33 with the Prescription Monitoring Program.

2015, c. 517.

§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director

A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 15 of § 2.2-3705.5. Records in possession of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.

B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director shall disclose the following:

1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated by the superintendent of the Department of State Police or designated by the chief law-enforcement officer of any county, city, or town or campus police department to conduct drug diversion investigations pursuant to § 54.1-3405.

2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health regulatory board; information relevant to a disciplinary proceeding before a health regulatory board or in any subsequent trial or appeal of an action or board order to

designated employees of the Department of Health Professions; or to designated persons operating the Health Practitioners' Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).

3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.

4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber to an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.

5. Information relevant to a specific investigation, supervision, or monitoring of a specific recipient for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed the Virginia State Police Drug Diversion School designated by the Director of the Department of Corrections or his designee.

C. In accordance with the Department's regulations and applicable federal law and regulations, the Director may, in his discretion, disclose:

1. Information in the possession of the program concerning a recipient who is over the age of 18 to that recipient. The information shall be mailed to the street or mailing address indicated on the recipient request form.

2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of establishing the treatment history of the specific recipient when such recipient is either under care and treatment by the prescriber or the prescriber is consulting on or initiating treatment of such recipient. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the prescriber from the Prescription Monitoring Program.

3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in (i) determining the validity of a prescription in accordance with § 54.1-3303 or (ii) providing clinical consultation on the care and treatment of the recipient. In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the dispenser from the Prescription Monitoring Program.

4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession when such regulatory authority licenses such dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory authority.

5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an

investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the Attorney General or to designated employees of the Department of Medical Assistance Services, as appropriate.

6. Information relevant to determination of the cause of death of a specific recipient to the designated employees of the Office of the Chief Medical Examiner.

7. Information for the purpose of bona fide research or education to qualified personnel; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted or redacted from such information prior to disclosure. Further, release of the information shall only be made pursuant to a written agreement between such qualified personnel and the Director in order to ensure compliance with this subdivision.

8. Information relating to prescriptions for covered substances issued by a specific prescriber, which have been dispensed and reported to the Program, to that prescriber.

9. Information about a specific recipient who is a member of a Virginia Medicaid managed care program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia Medicaid managed care program. Such information shall only be used to determine eligibility for and to manage the care of the specific recipient in a Patient Utilization Management Safety or similar program. Notice shall be given to recipients that information may be requested by a licensed physician or pharmacist employed by the Virginia Medicaid managed care program from the Prescription Monitoring Program.

10. (Expires July 1, 2022) Information to the Board of Medicine about prescribers who meet a certain threshold for prescribing covered substances for the purpose of requiring relevant continuing education. The threshold shall be determined by the Board of Medicine in consultation with the Program.

D. The Director may enter into agreements for mutual exchange of information among prescription monitoring programs in other jurisdictions, which shall only use the information for purposes allowed by this chapter.

E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the divulging of confidential records relating to investigative information.

F. Confidential information that has been received, maintained or developed by any board or disclosed by the board pursuant to subsection A shall not, under any circumstances, 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. However, this subsection shall not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

2002, c. 481; 2004, c. 690; 2005, cc. 637, 678; 2009, cc. 158, 162, 472; 2012, cc. 21, 71; 2013, c. 739; 2014, cc. 12, 97; 2015, cc. 118, 507; 2016, cc. 309, 410, 447, 568.

§ 54.1-2523.1. Criteria for indicators of misuse; Director's authority to disclose information; intervention

A. The Director shall develop, in consultation with an advisory panel which shall include representatives of the Boards of Medicine and Pharmacy, criteria for indicators of unusual patterns of prescribing or dispensing of covered substances by prescribers or dispensers and misuse of covered substances by recipients and a method for analysis of data collected by the Prescription Monitoring Program using the criteria for indicators of misuse to identify unusual patterns of prescribing or dispensing of covered substances by individual prescribers or dispensers or potential misuse of a covered substance by a recipient.

B. In cases in which analysis of data collected by the Prescription Monitoring Program using the criteria for indicators of misuse indicates an unusual pattern of prescribing or dispensing of a covered substance by an individual prescriber or dispenser or potential misuse of a covered substance by a recipient, the Director may, in addition to the discretionary disclosure of information pursuant to § 54.1-2523:

1. Disclose information about the unusual prescribing or dispensing of a covered substance by an individual prescriber or dispenser to the Enforcement Division of the Department of Health Professions; or

2. Disclose information about the specific recipient to (i) the prescriber or prescribers who have prescribed a covered substance to the recipient for the purpose of intervention to prevent misuse of such covered substance or (ii) an agent who has completed the Virginia State Police Drug Diversion School designated by the Superintendent of State Police or designated by the chief law-enforcement officer of any county, city, or town or campus police department for the purpose of an investigation into possible drug diversion.

2005, cc. 637, 678; 2012, cc. 21, 71; 2013, c. 739; 2016, c. 98.

§ 54.1-2523.2. (Effective until July 1, 2019) Authority to access database

Any prescriber or dispenser authorized to access the information in the possession of the Prescription Monitoring Program pursuant to this chapter may, pursuant to regulations promulgated by the Director to implement the provisions of this section, delegate such authority to individuals who are employed or engaged at the same facility and under the direct supervision of the prescriber or dispenser and (i) are licensed, registered, or certified by a health regulatory board under the Department of Health Professions or in another jurisdiction or (ii) have routine access to confidential patient data and have signed a patient data confidentiality agreement.

2009, cc. 158, 162; 2012, cc. 21, 71; 2014, c. 72; 2016, cc. 113, 406.

§ 54.1-2523.2. (Effective July 1, 2019) Authority to access database

Any prescriber or dispenser authorized to access the information in the possession of the Prescription Monitoring Program pursuant to this chapter may, pursuant to regulations promulgated by the Director to implement the provisions of this section, delegate such authority to health care professionals who are (i) licensed, registered, or certified by a health regulatory board under the Department of Health Professions or in another jurisdiction and (ii) employed at the same facility and under the direct supervision of the prescriber or dispenser.

2009, cc. 158, 162; 2012, cc. 21, 71; 2014, c. 72.

§ 54.1-2524. Immunity from liability

A. The Director and the employees of the Department of Health Professions shall not be liable for any civil damages resulting from the accuracy or inaccuracy of any information reported to and compiled and maintained by the Department pursuant to this chapter.

Further, the Director and the employees of the Department of Health Professions shall not be liable for any civil damages resulting from the disclosure of or failure to disclose any information in compliance with subsections B and C of § 54.1-2523 and the Department's regulations.

B. In the absence of gross negligence or willful misconduct, prescribers or dispensers complying in good faith with the reporting requirements of this chapter shall not be liable for any civil damages for any act or omission resulting from the submission of such required reports.

2002, c. 481.

§ 54.1-2525. Unlawful disclosure of information; disciplinary action authorized; penalties

A. It shall be unlawful for any person having access to the confidential information in the possession of the program or any data or reports produced by the program to disclose such confidential information except as provided in this chapter. Any person having access to the confidential information in the possession of the program or any data or reports produced by the program who discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

B. It shall be unlawful for any person who lawfully receives confidential information from the Prescription Monitoring Program to redisclose or use such confidential information in any way other than the authorized purpose for which the request was made. Any person who lawfully receives information from the Prescription Monitoring Program and discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

C. Nothing in this section shall prohibit (i) a person who prescribes or dispenses a covered substance required to be reported to the program from redisclosing information obtained from the Program to another prescriber or dispenser who has prescribed or dispensed a covered substance to a recipient or (ii) a person who prescribes a covered substance from placing information obtained from the Program in the recipient's medical record.

D. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall also be grounds for disciplinary action by the relevant health regulatory board.

2002, c. 481; 2011, cc. 812, 844; 2016, c. 309.

§ 54.1-2526. Exemption of information systems from provisions related to the Virginia Information Technologies Agency

The provisions of Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 shall not apply to the Prescription Monitoring Program pursuant to this chapter operated by the Department of Health Professions until July 1, 2012, unless an alternate date is mutually agreed upon.

2009, cc. 158, 162.

Chapter 26 - AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

§ 54.1-2600. Definitions

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

"Audiologist" means any person who engages in the practice of audiology.

"Board" means the Board of Audiology and Speech-Language Pathology.

"Practice of audiology" means the practice of conducting measurement, testing and evaluation relating to hearing and vestibular systems, including audiologic and electrophysiological measures, and conducting programs of identification, hearing conservation, habilitation, and rehabilitation for the purpose of identifying disorders of the hearing and vestibular systems and modifying communicative disorders related to hearing loss, including but not limited to vestibular evaluation, limited cerumen management, electrophysiological audiometry and cochlear implants. Any person offering services to the public under any descriptive name or title which would indicate that audiology services are being offered shall be deemed to be practicing audiology.

"Practice of speech-language pathology" means the practice of facilitating development and maintenance of human communication through programs of screening, identifying, assessing and interpreting, diagnosing, habilitating and rehabilitating speech-language disorders, including but not limited to:

1. Providing alternative communication systems and instruction and training in the use thereof;

2. Providing aural habilitation, rehabilitation and counseling services to hearing-impaired individuals and their families;

3. Enhancing speech-language proficiency and communication effectiveness; and

4. Providing audiologic screening.

Any person offering services to the public under any descriptive name or title which would indicate that professional speech-language pathology services are being offered shall be deemed to be practicing speech-language pathology.

"Speech-language disorders" means disorders in fluency, speech articulation, voice, receptive and expressive language (syntax, morphology, semantics, pragmatics), swallowing disorders, and cognitive communication functioning.

"Speech-language pathologist" means any person who engages in the practice of speech-language pathology.

1972, c. 181, § 54-83.1:5; 1974, c. 534; 1988, c. 765; 1992, c. 706; 2014, c. 327.

§ 54.1-2601. Exemptions

This chapter shall not:

1. Prevent any person from engaging, individually or through his employees, in activities for which he is licensed or from using appropriate descriptive words, phrases or titles to refer to his services;

2. Prevent any person employed by a federal, state, county or municipal agency, or an educational institution as a speech or hearing specialist or therapist from performing the regular duties of his office or position;

3. Prevent any student, intern or trainee in audiology or speech-language pathology, pursuing a course of study at an accredited university or college, or working in a recognized training center, under the direct supervision of a licensed or certified audiologist or speech-language pathologist, from performing services constituting a part of his supervised course of study;

4. Prevent a licensed audiologist or speech-language pathologist from employing or using the services of unlicensed persons as necessary to assist him in his practice;

5. Authorize any person, unless otherwise licensed to do so, to prepare, order, dispense, alter or repair hearing aids or parts of or attachments to hearing aids for consideration. However, audiologists licensed under this chapter may make earmold impressions and prepare and alter earmolds for clinical use and research.

1972, c. 181, § 54-83.1:7; 1978, c. 34; 1988, c. 765; 1992, c. 706 .

§ 54.1-2602. Board membership; officers; duties of Director of Department

The Board of Audiology and Speech-Language Pathology shall consist of seven members as follows: two licensed audiologists, two licensed speech-language pathologists, one otolaryngologist, and two citizen members. The terms of Board members shall be four years. All professional members of the Board shall have actively practiced their professions for at least two years prior to their appointments.

The Board shall elect annually a chairman and a vice-chairman.

The Board shall be authorized to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

1972, c. 181, §§ 54-83.1:8, 54-83.1:10; 1978, c. 34; 1979, c. 296; 1981, c. 447; 1987, c. 686, § 54-83.1:8.1; 1988, c. 765; 1992, c. 706; 2013, c. 436.

§ 54.1-2603. License required

A. In order to practice audiology or speech pathology, it shall be necessary to hold a valid license.

B. Notwithstanding the provisions of subdivision 2 of § 54.1-2601, the Board of Audiology and Speech-Language Pathology may license as school speech-language pathologists any person who holds a master's degree in speech-language pathology. The Board of Audiology and Speech-Language Pathology shall issue licenses to such persons without examination, upon review of credentials and payment of an application fee in accordance with regulations of the Board for school speech-language pathologists.

Persons holding such licenses as school speech-language pathologists, without examination, shall practice solely in public school divisions; holding a license as a school speech-language pathologist pursuant to this section shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Audiology and Speech-Language Pathology to offer to the public the services defined in § 54.1-2600.

The Board shall issue any person licensed as a school speech-language pathologist a license that notes the limitations on practice set forth in this subsection.

Persons who hold licenses issued by the Board of Audiology and Speech-Language Pathology without these limitations shall be exempt from the requirements of this subsection.

1979, c. 408, § 54-83.1:011; 1988, c. 765; 1999, cc. 967, 1005; 2014, c. 781.

§ 54.1-2604. Provisional license in audiology or speech-language pathology

The Board may issue a provisional license to an applicant for licensure in audiology or speech-language pathology who has met the educational and examination requirements for licensure, to allow for the applicant to obtain clinical experience as specified in the Board's regulations. However, a person practicing with a provisional license in audiology shall practice only under the supervision of a licensed audiologist and a person practicing with a provisional license in speech-language pathology shall practice only under the supervision of a licensed speech-language pathologist in accordance with regulations established by the Board.

2006, c. 97; 2013, c. 436.

§ 54.1-2605. Practice of assistant speech-language pathologists

A person who has met the qualifications prescribed by the Board may practice as an assistant speech-language pathologist in accordance with regulations of the Board and may perform limited

duties that are otherwise restricted to the practice of a speech-language pathologist under the supervision and direction of a licensed speech-language pathologist.

2014, c. 661; 2016, c. 77.

Chapter 27 - DENTISTRY

Article 1 - BOARD OF DENTISTRY

§ 54.1-2700. Definitions

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

"Board" means the Board of Dentistry.

"Dental hygiene" means duties related to patient assessment and the rendering of educational, preventive, and therapeutic dental services specified in regulations of the Board and not otherwise restricted to the practice of dentistry.

"Dental hygienist" means a person who is licensed by the Board to practice dental hygiene.

"Dentist" means a person who has been awarded a degree in and is licensed to practice dentistry.

"Dentistry" means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent and associated structures and their impact on the human body.

"License" means the document issued to an applicant upon completion of requirements for admission to practice dentistry or dental hygiene in the Commonwealth or upon registration for renewal of license to continue the practice of dentistry or dental hygiene in the Commonwealth.

"Maxillofacial" means pertaining to the jaws and face, particularly with reference to specialized surgery of this region.

"Oral and maxillofacial surgeon" means a person who has successfully completed an oral and maxillofacial residency program, approved by the Commission on Dental Accreditation of the American Dental Association, and who holds a valid license from the Board.

1950, p. 983, § 54-200.1; 1970, c. 639; 1972, c. 805; 1988, c. 765; 2001, c. 662; 2013, c. 240.

§ 54.1-2701. Exemptions

This chapter shall not:

1. Apply to a licensed physician or surgeon unless he practices dentistry as a specialty;

2. Apply to a nurse practitioner certified by the Board of Nursing and the Board of Medicine except that intraoral procedures shall be performed only under the direct supervision of a licensed dentist;

3. Apply to a dentist or a dental hygienist of the United States Army, Navy, Coast Guard, Air Force, Public Health Service, or Department of Veterans Affairs;

4. Apply to any dentist of the United States Army, Navy, Coast Guard, or Air Force rendering services voluntarily and without compensation while deemed to be licensed pursuant to § 54.1-106;

5. Apply to any dentist or dental hygienist who (i) does not regularly practice dentistry in Virginia, (ii) holds a current valid license or certificate to practice as a dentist or dental hygienist in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board at least 15 days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any dentist or dental hygienist whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations; or

6. Prevent an office assistant from performing usual secretarial duties or other assistance as set forth in regulations promulgated by the Board.

Code 1950, §§ 54-149 through 54-151, 54-172; 1970, c. 639; 1972, c. 805, § 54-200.23; 1975, c. 479; 1988, c. 765; 1995, c. 509; 2002, c. 740; 2003, c. 495.

§ 54.1-2702. Board; membership; terms of office; officers; quorum

The Board of Dentistry shall consist of ten members as follows: seven dentists, one citizen member and two dental hygienists.

The professional members of the Board shall be licensed practitioners of dentistry or dental hygiene, of acknowledged ability in the profession, and must have practiced dentistry or dental hygiene in this Commonwealth for at least three years.

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

The Board shall annually choose a president and a secretary-treasurer and shall meet at least annually at such times and places as it may deem proper. A majority of the members of the Board shall constitute a quorum.

Code 1950, §§ 54-153 through 54-155, 54-157, 54-161, 54-162; 1972, c. 805; 1977, c. 669; 1985, c. 49; 1986, c. 464; 1988, cc. 42, 66, 765; 1992, c. 411 .

§ 54.1-2703. Inspection of dental offices and laboratories

Employees of the Department of Health Professions, when properly identified, shall be authorized, during ordinary business hours, to enter and inspect any dental office or dental laboratory for the purpose of enforcing the provisions of this chapter.

Code 1950, § 54-167; 1962, c. 45; 1972, c. 805; 1988, c. 765; 2005, cc. 505, 587.

§ 54.1-2704. Nominations

Nominations may be made for each professional vacancy from a list of three names submitted to the Governor by the Virginia Dental Association, the Old Dominion State Dental Society, the Virginia Dental Hygienists' Association, and the Commonwealth Dental Hygienists' Society. Further, any licensee of this chapter may submit nominations to the Governor. The Governor shall not be bound to make any appointment from among the nominees.

Code 1950, § 54-156; 1972, c. 805; 1977, c. 669; 1986, c. 464; 1988, c. 765; 2005, cc. 505, 587.

§ 54.1-2705. Investigation of applicant for license

The Board shall investigate the qualifications and truthfulness on registration of any applicant for a license to practice dentistry or dental hygiene, and for such purposes shall have power to send for witnesses, papers and documents, and administer oaths. The cost of such inquiry shall be borne by the applicant.

Code 1950, § 54-176; 1972, c. 805; 1975, c. 479; 1988, c. 765.

§ 54.1-2706. Revocation or suspension; other sanctions

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant, suspend for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

1. Fraud, deceit or misrepresentation in obtaining a license;

2. The conviction of any felony or the conviction of any crime involving moral turpitude;

3. Use of alcohol or drugs to the extent that such use renders him unsafe to practice dentistry or dental hygiene;

4. Any unprofessional conduct likely to defraud or to deceive the public or patients;

5. Intentional or negligent conduct in the practice of dentistry or dental hygiene which causes or is likely to cause injury to a patient or patients;

6. Employing or assisting persons whom he knew or had reason to believe were unlicensed to practice dentistry or dental hygiene;

7. Publishing or causing to be published in any manner an advertisement relating to his professional practice which (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates regulations promulgated by the Board governing advertising;

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

9. Violating, assisting, or inducing others to violate any provision of this chapter or any Board regulation;

10. Conducting his practice in a manner contrary to the standards of ethics of dentistry or dental hygiene;

11. Practicing or causing others to practice in a manner as to be a danger to the health and welfare of his patients or to the public;

12. Practicing outside the scope of the dentist's or dental hygienist's education, training, and experience;

13. Performing a procedure subject to certification without such valid certification required by the Board pursuant to § 54.1-2709.1 and Board regulations; however, procedures performed pursuant to the provisions of subsection A of § 54.1-2711.1 as part of an American Dental Association accredited residency program shall not require such certification;

14. The revocation, suspension or restriction of a license to practice dentistry or dental hygiene in another state, possession or territory of the United States or foreign country; or

15. The violation of any provision of a state or federal law or regulation relating to manufacturing, distributing, dispensing or administering drugs.

Code 1950, § 54-187; 1962, c. 45; 1972, c. 805; 1973, c. 391; 1975, c. 479; 1978, cc. 247, 248; 1984, c. 28; 1988, c. 765; 2001, c. 662; 2004, c. 64; 2005, cc. 505, 587.

§ 54.1-2707. Reserved

Reserved.

§ 54.1-2708. Disciplinary action discretion

Except in the case of a monetary penalty, the Board may take disciplinary action notwithstanding any action pending before or consummated before any court or any criminal penalty which has been or may be imposed.

1972, c. 805, § 54-189.1; 1975, c. 479; 1978, c. 248; 1988, cc. 64; 765; 1997, c. 556.

§ 54.1-2708.1. Repealed

Repealed by Acts 1997, c. 698.

§ 54.1-2708.2. Recovery of monitoring costs

The Board may recover from any licensee against whom disciplinary action has been imposed reasonable administrative costs associated with investigating and monitoring such licensee and confirming compliance with any terms and conditions imposed upon the licensee as set forth in the order imposing disciplinary action. Such recovery shall not exceed a total of $5,000. All administrative costs recovered pursuant to this section shall be paid by the licensee to the Board. Such administrative costs shall be deposited into the account of the Board and shall not constitute a fine or penalty.

2009, c. 89.

§ 54.1-2708.3. Regulation of mobile dental clinics

No person shall operate a mobile dental clinic or other portable dental operation without first registering such mobile dental clinic or other portable dental operation with the Board, except that the following shall be exempt from such registration requirement: (i) mobile dental clinics or other portable dental operations operated by federal, state, or local government agencies or other entities identified by the Board in regulations; (ii) mobile dental clinics operated by federally qualified health centers with a dental component that provides dental services via mobile model to adults and children within 30 miles of the federally qualified health center; (iii) mobile dental clinics operated by free health clinics or health safety net clinics that have been granted tax-exempt status pursuant to § 501(c)(3) of the Internal Revenue Code that provide dental services via mobile model to adults and children within 30 miles of the free health clinic or health safety net clinic; and (iv) mobile dental clinics that provide dental services via mobile model to individuals who are not ambulatory and who reside in long-term care facilities, assisted living facilities, adult care homes, or private homes.

The Board shall promulgate regulations for mobile dental clinics and other portable dental operations to ensure that patient safety is protected, appropriate dental services are rendered, and needed follow-up care is provided. Such regulations shall include, but not be limited to, requirements for the registration of mobile dental clinics, locations where services may be provided, requirements for reporting by providers, and other requirements necessary to provide accountability for services rendered.

2010, c. 405; 2016, c. 78.

Article 2 - LICENSURE OF DENTISTS

§ 54.1-2709. License; application; qualifications; examinations

A. No person shall practice dentistry unless he possesses a current valid license from the Board of Dentistry.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character; (ii) is a graduate of an accredited dental school or college, or dental department of a university or college; (iii) has passed all parts of the examination given by the Joint Commission on National Dental Examinations; (iv) has successfully completed a clinical examination acceptable to the Board; and (v) has met other qualifications as determined in regulations promulgated by the Board.

C. The Board may grant a license to practice dentistry to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) has been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the

United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the Board to satisfy this requirement.

D. The Board shall provide for an inactive license for those dentists who hold a current, unrestricted dental license in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. The Board shall promulgate regulations requiring continuing education for any dental license renewal or reinstatement. The Board may grant extensions or exemptions from these continuing education requirements.

Code 1950, §§ 54-168 through 54-171, 54-175; 1968, c. 604; 1972, cc. 805, 824; 1973, c. 391; 1974, c. 411; 1976, c. 327; 1977, c. 518; 1981, c. 216; 1988, c. 765; 1997, c. 855; 2005, cc. 505, 587; 2007, c. 20; 2012, cc. 20, 116.

§ 54.1-2709.1. Certain certification required

A. The Board of Dentistry shall promulgate regulations establishing criteria for certification of board certified or board eligible oral or maxillofacial surgeons to perform certain procedures within the definition of dentistry that are unrelated to the oral cavity or contiguous structures, provided such services (i) are not for the prevention and treatment of disorders, diseases, lesions and malpositions of the human teeth, alveolar process, maxilla, mandible, or adjacent tissues, or any necessary related procedures, and are services the training for which is included in the curricula of dental schools or advanced postgraduate education programs accredited by the Commission of Dental Accreditation of the American Dental Association or continuing educational programs recognized by the Board of Dentistry, or (ii) are not provided incident to a head or facial trauma sustained by the patient. The regulations shall include, but need not be limited to, provisions for: (1) promotion of patient safety; (2) identification and categorization of procedures for the purpose of issuing certificates; (3) establishment of an application process for certification to perform such procedures; (4) establishment of minimum education, training, and experience requirements for certification to perform such procedures, including consideration of whether a licensee has been granted practice privileges to perform such procedures from an accredited hospital located in the Commonwealth and consideration of the presentation of a letter attesting to the training of the applicant to perform such procedures from the chairman of an accredited postgraduate residency program; (5) development of protocols for proctoring and criteria for requiring such proctoring; and (6) implementation of a quality assurance review process for such procedures performed by certificate holders.

B. In promulgating the minimum education, training, and experience requirements for oral and maxillofacial surgeons to perform such procedures and the regulations related thereto, the Board of Dentistry shall consult with an advisory committee comprised of three members selected by the

Medical Society of Virginia and three members selected by the Virginia Society of Oral and Maxillofacial Surgeons. All members of the advisory committee shall be licensed by the Board of Dentistry or the Board of Medicine and shall engage in active clinical practice. The committee shall have a duty to act collaboratively and in good faith to recommend the education, training, and experience necessary to promote patient safety in the performance of such procedures. The advisory committee shall prepare a written report of its recommendations and shall submit this report to the Board of Dentistry and shall also submit its recommendations to the Board of Medicine for such comments as may be deemed appropriate, prior to the promulgation of draft regulations. The advisory committee may meet periodically to advise the Board of Dentistry on the regulation of such procedures.

C. In promulgating the regulations required by this section, the Board shall take due consideration of the education, training, and experience requirements adopted by the American Dental Association Council on Dental Education or the Commission on Dental Accreditation. Further, the Board's regulations shall require that complaints arising out of performance of such procedures be enforced solely by the Board of Dentistry and reviewed jointly by a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry. However, upon receipt of reports of such complaints the Board of Dentistry shall promptly notify the Board of Medicine which shall maintain the confidentiality of such complaint consistent with § 54.1-2400.2.

2001, c. 662.

§ 54.1-2709.2. Registration and certain data required

The Board of Dentistry shall require all oral and maxillofacial surgeons to annually register with the Board and to report and make available the following information:

1. The names of medical schools or schools of dentistry attended and dates of graduation;

2. Any graduate medical or graduate dental education at any institution approved by the Accreditation Council for Graduation Medical Education, the Commission on Dental Accreditation, American Dental Association;

3. Any specialty board certification or eligibility for certification as approved by the Commission on Dental Accreditation, American Dental Association;

4. The number of years in active, clinical practice as specified by regulations of the Board;

5. Any insurance plans accepted, managed care plans in which the oral and maxillofacial surgeon participates, and hospital affiliations, including specification of any privileges granted by the hospital;

6. Any appointments, within the most recent 10-year period, of the oral and maxillofacial surgeon to a dental school faculty and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;

7. The location of any primary and secondary practice settings and the approximate percentage of the oral and maxillofacial surgeon's time spent practicing in each setting;

8. The access to any translating service provided to the primary practice setting of the oral and maxillofacial surgeon;

9. The status of the oral and maxillofacial surgeon's participation in the Virginia Medicaid Program;

10. Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ 54.1-2400.6, 54.1-2709.3, and 54.1-2709.4 that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action; and

11. Other information related to the competency of oral and maxillofacial surgeons as specified in the regulations of the Board.

The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request by a consumer, of such information relating to an oral and maxillofacial surgeon. The regulations promulgated by the Board shall provide for reports to include all paid claims in categories indicating the level of significance of each award or settlement.

2001, c. 662; 2004, c. 64.

§ 54.1-2709.3. Reports of disciplinary action against oral and maxillofacial surgeons; immunity from liability

A. The presidents of the Virginia Dental Association and the Virginia Society of Oral and Maxillofacial Surgeons shall report to the Board of Dentistry any disciplinary actions taken by his organization against any oral and maxillofacial surgeon licensed under this chapter if such disciplinary action is a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug or alcohol abuse.

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

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

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

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

2001, c. 662.

§ 54.1-2709.4. Further reporting requirements

A. The following matters shall be reported to the Board:

1. Any disciplinary action taken against an oral and maxillofacial surgeon licensed under this chapter by another state or by a federal health institution or voluntary surrender of a license in another state while under investigation;

2. Any malpractice judgment against an oral and maxillofacial surgeon licensed under this chapter;

3. Any incident of two settlements of malpractice claims against an individual oral and maxillofacial surgeon licensed under this chapter within a three-year period; and

4. Any evidence that indicates to a reasonable probability that an oral and maxillofacial surgeon licensed under this chapter is or may be professionally incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of his profession.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any oral and maxillofacial surgeon licensed under this chapter who is the subject of a disciplinary action, settlement judgment or evidence for which reporting is required pursuant to this section;

2. Any other person licensed under this chapter, except as provided in the Health Practitioners' Monitoring Program;

3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Health Practitioners' Monitoring Program;

4. All health care institutions licensed by the Commonwealth;

5. The malpractice insurance carrier of any oral and maxillofacial surgeon who is the subject of a judgment or of two settlements within a three-year period. The carrier shall not be required to report any settlements except those in which it has participated that have resulted in a least two settlements on behalf of an individual oral and maxillofacial surgeon during a three-year period; and

6. Any health maintenance organization licensed by the Commonwealth.

C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

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

E. Any person making a report required by this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any oral and maxillofacial surgeon known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.

2001, c. 662; 2009, c. 472.

§ 54.1-2709.5. Permits for sedation and anesthesia required

A. Except as provided in subsection C, the Board shall require any dentist who provides or administers sedation or anesthesia in a dental office to obtain either a conscious/moderate sedation permit or a deep sedation/general anesthesia permit issued by the Board. The Board shall establish by regulation reasonable education, training, and equipment standards for safe administration and monitoring of sedation and anesthesia to patients in a dental office.

B. A permit for conscious/moderate sedation shall not be required if a permit has been issued for the administration of deep sedation/general anesthesia.

C. This section shall not apply to:

1. An oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the Board with reports which result from the periodic office examinations required by AAOMS; or

2. Any dentist who administers or prescribes medication or administers nitrous oxide/oxygen or a combination of a medication and nitrous oxide/oxygen for the purpose of inducing anxiolysis or minimal sedation consistent with the Board's regulations.

2011, c. 526.

§ 54.1-2710. Repealed

Repealed by Acts 2005, cc. 505 and 587, cl. 2.

§ 54.1-2711. Practice of dentistry

Any person shall be deemed to be practicing dentistry who (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any

way represents him as engaged in the practice of dentistry; (ii) holds himself out, advertises or permits to be advertised that he can or will perform dental operations of any kind; (iii) diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents or contiguous structures, or (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes impressions for the fabrication of appliances or dental prosthesis, supplies or repairs artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes.

No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist.

Code 1950, § 54-146; 1972, c. 805; 1988, c. 765.

§ 54.1-2711.1. Temporary licenses to persons enrolled in advanced dental education programs; Board regulations

A. Upon recommendation by the dean of the school of dentistry or the dental program director, the Board may issue a temporary annual license to practice dentistry to persons enrolled in advanced dental education programs and persons serving as dental interns, residents or post-doctoral certificate or degree candidates in hospitals or schools of dentistry that maintain dental intern, residency or post-doctoral programs accredited by the Commission on Dental Accreditation of the American Dental Association. Such license shall expire upon the holder's graduation, withdrawal or termination from the relevant program.

B. Temporary licenses issued pursuant to this section shall authorize the licensee to perform patient care activities associated with the program in which he is enrolled that take place only within educational facilities owned or operated by, or affiliated with, the dental school or program. Temporary licenses issued pursuant to this section shall not authorize a licensee to practice dentistry in nonaffiliated clinics or private practice settings.

C. The Board may prescribe such regulations not in conflict with existing law and require such reports from any hospital or the school of dentistry operating an accredited advanced dental education program in the Commonwealth as may be necessary to carry out the provisions of this section.

2004, c. 754; 2012, cc. 20, 116.

§ 54.1-2712. Permissible practices

The following activities shall be permissible:

1. Dental assistants or dental hygienists aiding or assisting licensed dentists, or dental assistants aiding or assisting dental hygienists under the general supervision of a dentist in accordance with regulations promulgated pursuant to § 54.1-2729.01;

2. The performance of mechanical work on inanimate objects only, for licensed dentists, by any person employed in or operating a dental laboratory;

3. Dental students who are enrolled in accredited D.D.S. or D.M.D. degree programs performing dental operations, under the direction of competent instructors (i) within a dental school or college, dental department of a university or college, or other dental facility within a university or college that is accredited by an accrediting agency recognized by the United States Department of Education; (ii) in a dental clinic operated by a nonprofit organization providing indigent care; (iii) in governmental or indigent care clinics in which the student is assigned to practice during his final academic year rotations; (iv) in a private dental office for a limited time during the student's final academic year when under the direct tutorial supervision of a licensed dentist holding appointment on the dental faculty of the school in which the student is enrolled; or (v) practicing dental hygiene in a private dental office under the direct supervision of a licensed dentist holding appointment on the dental faculty of the school in which the student is enrolled;

4. A licensed dentist from another state or country appearing as a clinician for demonstrating technical procedures before a dental society or organization, convention, or dental college, or performing his duties in connection with a specific case on which he may have been called to the Commonwealth;

5. Dental hygiene students enrolled in an accredited dental hygiene program performing dental hygiene practices as a requisite of the program, under the direction of competent instructors, as defined by regulations of the Board of Dentistry, (i) within a dental hygiene program in a dental school or college, or department thereof, or other dental facility within a university or college that is accredited by an accrediting agency recognized by the United States Department of Education; (ii) in a dental clinic operated by a nonprofit organization providing indigent care; (iii) in a governmental or indigent care clinic in which the student is assigned to practice during his final academic year rotations; or (iv) in a private dental office for a limited time during the student's final academic year when under the direct supervision of a licensed dentist or licensed dental hygienist holding appointment on the dental faculty of the school in which the student is enrolled; and

6. A graduate of an accredited dental program or a graduate of an accredited dental hygiene program engaging in clinical practice under the supervision of a licensed faculty member, but only while participating in a continuing education course offered by a dental program or dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association.

Code 1950, § 54-147; 1970, c. 639; 1972, c. 805; 1975, c. 479; 1985, c. 373; 1988, c. 765; 1989, c. 131; 1994, c. 749; 2004, c. 754; 2005, cc. 505, 587; 2008, cc. 84, 264; 2012, cc. 20, 116.

§ 54.1-2712.1. Restricted volunteer license for certain dentists

A. The Board may issue a restricted volunteer license to a dentist who:

1. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;

2. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

3. Has fulfilled the Board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

4. Has not failed a clinical examination within the past five years; and

5. Has had at least five years of clinical practice.

B. A person holding a restricted volunteer license under this section shall:

1. Only practice in public health or community free clinics that provide dental services to underserved populations;

2. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

3. Attest on a form provided by the Board that he will not receive remuneration directly or indirectly for providing dental services; and

4. Not be required to complete continuing education in order to renew such a license.

C. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days.

D. A restricted voluntary license granted pursuant to this section shall expire on the June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship. Such license may be renewed annually in accordance with regulations promulgated by the Board.

E. A dentist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all dentists practicing in Virginia.

1997, c. 719; 1998, c. 326; 2005, cc. 505, 587.

§ 54.1-2713. Licenses to teach dentistry; renewals

A. Upon payment of the prescribed fee and provided that no grounds exist to deny licensure pursuant to § 54.1-2706, the Board may grant, without examination, a faculty license to teach dentistry in a dental program accredited by the Commission on Dental Accreditation of the American Dental Association to any applicant who meets one of the following qualifications:

1. Is a graduate of a dental school or college or the dental department of a college or university, has a current unrestricted license to practice dentistry in at least one other United States jurisdiction, and has never been licensed to practice dentistry in the Commonwealth; or

2. Is a graduate of a dental school or college or the dental department of a college or university, has completed an advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association, and has never been licensed to practice dentistry in the Commonwealth.

B. The dean or program director of the accredited dental program shall provide to the Board verification that the applicant is being hired by the program and shall include an assessment of the applicant's clinical competency and clinical experience that qualifies the applicant for a faculty license.

C. The holder of a license issued pursuant to this section shall be entitled to perform all activities that a person licensed to practice dentistry would be entitled to perform and that are part of his faculty duties, including all patient care activities associated with teaching, research, and the delivery of patient care, which take place only within educational facilities owned or operated by or affiliated with the dental school or program. A licensee who is qualified based on educational requirements for a specialty board certification shall only practice in the specialty for which he is qualified. A license issued pursuant to this section shall not authorize the holder to practice dentistry in nonaffiliated clinics or in private practice settings.

D. Any license issued under this section shall expire on June 30 of the second year after its issuance or shall terminate when the licensee leaves employment at the accredited dental program. Such license may be renewed annually thereafter as long as the accredited program certifies to the licensee's continuing employment.

1975, c. 479, § 54-175.1; 1976, c. 327; 1988, c. 765; 2005, cc. 505, 587; 2012, cc. 20, 116.

§ 54.1-2714. Restricted licenses to teach dentistry for foreign dentists

A. The Board may grant, without examination, a restricted license for a temporary appointment to teach dentistry at a dental school in this Commonwealth to any person who:

1. Is a resident of a foreign country;

2. Is licensed to practice dentistry in a foreign country;

3. Holds a faculty appointment in a dental school in a foreign country;

4. Is a graduate of a foreign dental school or college or the dental department of a foreign college or university;

5. Is not licensed to practice dentistry in Virginia;

6. Has not failed an examination for a license to practice dentistry in this Commonwealth;

7. Has received a temporary appointment to the faculty of a dental school in this Commonwealth to teach dentistry;

8. Is, in the opinion of the Board, qualified to teach dentistry; and

9. Submits a completed application, the supporting documents the Board deems necessary to determine his qualifications, and the prescribed fee.

B. A restricted license shall entitle the licensee to perform all operations which a person licensed to practice dentistry may perform but only for the purpose of teaching. No person granted a restricted license shall practice dentistry intramurally or privately or receive fees for his services.

C. A restricted license granted pursuant to this section shall expire 24 months from the date of issuance and may not be renewed or reissued.

1977, c. 349, § 54-175.2; 1988, c. 765; 2012, cc. 20, 116.

§ 54.1-2714.1. Repealed

Repealed by Acts 2012, cc. 20 and 116, cl. 2.

§ 54.1-2715. Temporary permits for certain clinicians

A. The Board may issue a temporary permit to a graduate of a dental school or college or the dental department of a college or university, who (i) has a D.D.S. or D.M.D. degree and is otherwise qualified, (ii) is not licensed to practice dentistry in Virginia, and (iii) has not failed an examination for a license to practice dentistry in the Commonwealth. Such temporary permits may be issued only to those eligible graduates who serve as clinicians in dental clinics operated by (a) the Virginia Department of Corrections, (b) the Virginia Department of Health, (c) the Virginia Department of Behavioral Health and Developmental Services, or (d) a Virginia charitable corporation granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services: (i) as a federal qualified health center designated by the Centers for Medicare and Medicaid Services or (ii) at a reduced or sliding fee scale or without charge.

B. Applicants for temporary permits shall be certified to the executive director of the Board by the Director of the Department of Corrections, the Commissioner of Health, the Commissioner of Behavioral Health and Developmental Services, or the chief executive officer of a Virginia charitable corporation identified in subsection A. The holder of such a temporary permit shall not be entitled to receive any fee or other compensation other than salary. Such permits shall be valid for no more than two years and shall expire on the June 30 of the second year after their issuance, or shall terminate when the holder ceases to serve as a clinician with the certifying agency or charitable corporation. Such permits may be reissued annually or may be revoked at any time for cause. Reissuance or revocation of a temporary permit is in the discretion of the Board.

C. Dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A.

Code 1950, § 54-152; 1968, c. 604; 1970, c. 639; 1972, c. 805; 1975, c. 479; 1976, c. 327; 1985, c. 373; 1988, c. 765; 2002, c. 549; 2004, c. 48; 2005, cc. 505, 587; 2006, c. 176; 2009, cc. 813, 840.

§ 54.1-2716. Practicing in a commercial or mercantile establishment

It shall be unlawful for any dentist to practice his profession in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice dentistry in such commercial or mercantile establishment. This section shall not prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by a dentist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any dentist who violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities or services unrelated to the practice of dentistry or the other healing arts.

Code 1950, § 54-147.1; 1988, c. 765.

§ 54.1-2717. Practice of dentistry by professional business entities

A. No corporation shall be formed or foreign corporation domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional corporation as permitted by Chapter 7 (§ 13.1-542 et seq.) of Title 13.1.

B. No limited liability company shall be organized or foreign limited liability company domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional limited liability company as permitted by Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1.

C. Notwithstanding the provisions of subsections A and B, dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A of § 54.1-2715.

Code 1950, § 54-183; 1988, c. 765; 1992, c. 574; 2004, c. 48.

§ 54.1-2718. Practicing under firm or assumed name

A. No person shall practice, offer to practice, or hold himself out as practicing dentistry, under a name other than his own. This section shall not prohibit the practice of dentistry by a partnership under a firm name, or a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a firm name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified in subsection A of § 54.1-2715.

B. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:

1. The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist's name.

2. Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.

3. The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.

4. Marquee signage, web page addresses, and email addresses are not considered to be advertisements and may be limited to the trade name adopted for the practice.

Code 1950, § 54-184; 1970, c. 639; 1975, c. 479; 1988, c. 765; 1992, c. 574; 2004, c. 48; 2005, cc. 505, 587.

§ 54.1-2719. Persons engaged in construction and repair of appliances

A. Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation so employed or engaged shall not be considered to be practicing dentistry. No such person, firm or corporation shall perform any direct dental service for a patient, but they may assist a dentist in the selection of shades for the matching of prosthetic devices when the dentist sends the patient to them with a written work order.

B. Any licensed dentist who employs the services of any person, firm or corporation not working in a dental office under his direct supervision to construct or repair, extraorally, prosthetic dentures, bridges, replacements, or orthodontic appliances for a part of a tooth, a tooth, or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the Board which shall, at minimum, contain: (i) the name and address of the person, firm or corporation; (ii) the patient's name or initials or an identification number; (iii) the date the work order was written; (iv) a description of the work to be done, including diagrams, if necessary; (v) specification of the type and quality of materials to be used; and (vi) the signature and address of the dentist.

The person, firm or corporation shall retain the original work order and the dentist shall retain a duplicate for three years.

C. If the person, firm or corporation receiving a written work order from a licensed dentist engages a subcontractor to perform services relative to the work order, a written subwork order shall be furnished on forms prescribed by the Board which shall, at minimum, contain: (i) the name and

address of the subcontractor; (ii) a number identifying the subwork order with the original work order; (iii) the date the subwork order was written; (iv) a description of the work to be done by the subcontractor including diagrams, if necessary; (v) a specification of the type and quality of materials to be used; and (vi) the signature of the person issuing the subwork order.

The subcontractor shall retain the subwork order and the issuer shall retain a duplicate attached to the work order received from the licensed dentist for three years.

D. No person, firm or corporation engaged in the construction or repair of appliances shall refuse to allow the Board or its agents to inspect the files of work orders or subwork orders during ordinary business hours.

The provisions of this section shall not apply to a work order for the construction, reproduction, or repair, extraorally, of prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth, done by a person, firm or corporation pursuant to a written work order received from a licensed dentist who is residing and practicing in another state.

1962, c. 45, § 54-147.2; 1972, c. 805; 1988, c. 765.

§ 54.1-2720. Display of name of practitioner

Every person practicing dentistry under a firm name, and every person practicing dentistry as an employee of another licensed dentist shall conspicuously display his name at the entrance of the office. Any licensed dentist who fails to display his name shall be subject to disciplinary action by the Board.

Code 1950, § 54-186; 1972, c. 805; 1988, c. 765; 2005, cc. 505, 587.

§ 54.1-2721. Display of license

Every person practicing dentistry in this Commonwealth shall display his license in his office in plain view of patients. Any person practicing dentistry without having his license on display shall be subject to disciplinary action by the Board.

The provisions of this section shall not apply to any dentist while he is serving as a volunteer providing dental services in an underserved area of the Commonwealth under the auspices of a Virginia charitable corporation granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services.

Code 1950, § 54-197; 1972, c. 805; 1988, c. 765; 2006, c. 823.

Article 3 - LICENSURE OF DENTAL HYGIENISTS

§ 54.1-2722. License; application; qualifications; practice of dental hygiene

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the

Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of a dental hygiene program accredited by the Commission on Dental Accreditation and offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient. Pursuant to subsection V of § 54.1-3408, a licensed dental hygienist may administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be present in the facility while the authorized services are being provided.

The Board shall provide for an inactive license for those dental hygienists who hold a current, unrestricted license to practice in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. For the purposes of this subsection, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of Health who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Commonwealth under the remote supervision of a dentist employed by the Department of Health. A dental hygienist providing such services shall practice pursuant to a protocol adopted by the Commissioner of Health on September 23, 2010, having been developed jointly by (i) the medical directors of the Cumberland Plateau, Southside, and Lenowisco Health Districts; (ii) dental hygienists employed by the Department of Health; (iii) the Director of the Dental Health Division of the Department of Health; (iv) one representative of the Virginia Dental Association; and (v) one representative of the Virginia Dental Hygienists' Association. Such protocol shall be adopted by the Board as regulations.

A report of services provided by dental hygienists pursuant to such protocol, including their impact upon the oral health of the citizens of the Commonwealth, shall be prepared and submitted by the Department of Health to the Virginia Secretary of Health and Human Resources annually. Nothing in this section shall be construed to authorize or establish the independent practice of dental hygiene.

F. For the purposes of this subsection, "remote supervision" means that a dentist is accessible and available for communication and consultation with a dental hygienist employed by such dentist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any other provision of law, a dental hygienist may practice dental hygiene under the remote supervision of a dentist who holds an active, unrestricted license by the Board and who has a dental office physically located in the Commonwealth. No dental hygienist shall practice under remote supervision unless he has (i) completed a continuing education course offered by an accredited dental education program or from a continuing education provider approved by the Board and (ii) at least two years of clinical experience, consisting of at least 2,500 hours of clinical experience. A dental hygienist practicing under remote supervision shall have professional liability insurance with policy limits acceptable to the supervising dentist. A dental hygienist shall only practice under remote supervision at a community health center, charitable safety net facility, free clinic, long-term care facility, elementary or secondary school, Head Start program, or women, infants, and children program.

A dental hygienist practicing under remote supervision may (a) obtain a patient's treatment history and consent, (b) perform an oral assessment, (c) perform scaling and polishing, (d) perform all educational and preventative services, (e) take X-rays as ordered by the supervising dentist or consistent with a standing order, (f) maintain appropriate documentation in the patient's chart, (g) administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine pursuant to subsection V of § 54.1-3408, and (h) perform any other service ordered by the supervising dentist or required by statute or

Board regulation. No dental hygienist practicing under remote supervision shall administer local anesthetic or nitrous oxide.

Prior to providing a patient dental hygiene services, a dental hygienist practicing under remote supervision shall obtain (1) the patient's or the patient's legal representative's signature on a statement disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for the need for regular dental examinations by a dentist and (2) verbal or written permission of any dentist who has treated the patient in the previous 12 months and can be identified by the patient.

After conducting an initial oral assessment of a patient, a dental hygienist practicing under remote supervision shall consult with the supervising dentist prior to providing further dental hygiene services if such patient is medically compromised or has periodontal disease.

A dental hygienist practicing under remote supervision shall inform the supervising dentist of all findings for a patient. A dental hygienist practicing under remote supervision may continue to treat a patient for 90 days. After such 90-day period, the supervising dentist, absent emergent circumstances, shall either conduct an examination of the patient or refer the patient to another dentist to conduct an examination. The supervising dentist shall develop a treatment plan for the patient and either the supervising dentist or the dental hygienist shall provide the treatment plan to the patient. The supervising dentist shall review a patient's records at least once every 10 months.

Nothing in this subsection shall prevent a dental hygienist from practicing dental hygiene under general supervision whether as an employee or as a volunteer.

1950, pp. 983-985, §§ 54-200.2, 54-200.4, 54-200.7 through 54-200.9, 54-200.11; 1968, c. 604; 1970, c. 639; 1972, cc. 805, 824; 1973, c. 391; 1975, c. 479; 1976, c. 327; 1986, c. 178; 1988, c. 765; 1990, c. 441; 1997, c. 855; 2002, c. 170; 2005, cc. 505, 587; 2006, c. 858; 2007, c. 702; 2009, cc. 99, 506, 561; 2011, c. 289; 2012, c. 102; 2013, c. 240; 2016, c. 497.

§ 54.1-2723. Repealed

Repealed by Acts 2005, cc. 505 and 587, cl. 2.

§ 54.1-2724. Limitations on the employment of dental hygienists

The Board shall determine by regulation the total number of dental hygienists, including dental hygienists under general supervision and dental hygienists under remote supervision, who may work at one time for a dentist. No dentist shall employ more than two dental hygienists who practice under remote supervision at one time. The State Board of Health may employ the necessary number of hygienists in public school dental clinics, subject to regulations of the Board.

1950, p. 984, § 54-200.6; 1972, c. 805; 1978, c. 247; 1988, c. 765; 2016, c. 497.

§ 54.1-2725. Faculty licenses to teach dental hygiene; renewals

A. Upon payment of the prescribed fee, the Board shall grant, without examination, a license to teach dental hygiene to any applicant who (i) is a graduate of a dental hygiene school or college or the dental hygiene department of a college or university accredited by the Commission of Dental Accreditation of the American Dental Association; (ii) has a B.S., B.A., A.B., or M.S. degree and is otherwise qualified; (iii) is not licensed to practice dental hygiene; and (iv) has a license to practice dental hygiene in at least one other United States jurisdiction.

B. The dean or program director of the accredited dental hygiene program shall provide to the Board verification that the applicant is being hired by the program and shall include an assessment of the applicant's clinical competency and clinical experience that qualifies the applicant for a faculty license.

C. The holder of a license issued pursuant to this section shall be entitled to perform all activities that a person licensed to practice dental hygiene would be entitled to perform that are part of his faculty duties, including all patient care activities associated with teaching, research, and the delivery of patient care that take place only within educational facilities owned or operated by or affiliated with the dental school or program. A license issued pursuant to this section does not entitle the holder to practice dental hygiene in nonaffiliated clinics or other private practice settings.

D. Any license issued under this section shall expire on June 30 of the second year after its issuance or shall terminate when the licensee leaves employment at the accredited dental program. Such license may be renewed annually thereafter as long as the accredited program certifies to the licensee's continuing employment.

1975, c. 479, § 54-175.1; 1976, c. 327; 1988, c. 765; 2012, cc. 20, 116.

§ 54.1-2726. Temporary permits for certain hygienists

A. The Board may issue a temporary permit to a graduate of an accredited dental hygiene program who is otherwise qualified, has not held a license to practice dental hygiene in Virginia, and has not failed an examination for a license to practice dental hygiene in the Commonwealth. Such temporary permits shall be issued only to those eligible graduates who serve in the Department of Health or the Department of Behavioral Health and Developmental Services in a dental clinic operated by the Commonwealth or in a Virginia charitable corporation granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operated as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services: (i) as a federally qualified health center designated by the Centers for Medicare & Medicaid Services (CMS) or (ii) at a reduced or sliding fee scale or without charge.

B. Applicants for temporary permits shall be certified to the executive director of the Board by the Commissioner of Health or the Commissioner of Behavioral Health and Developmental Services or the chief executive officer of a Virginia charitable corporation pursuant to subsection A. The holder of such permit shall not be entitled to receive any fee or compensation other than salary. Such permits shall be valid for no more than two years and shall expire on the June 30 of the second year

after their issuance, or shall terminate when the holder ceases to be employed by the certifying agency. Such permits may be reissued annually or may be revoked at any time for cause. Reissuance or revocation of a temporary permit is in the discretion of the Board.

The holder of a temporary permit shall function under the direction of a dentist.

Code 1950, § 54-152; 1968, c. 604; 1970, c. 639; 1972, c. 805; 1975, c. 479; 1976, c. 327; 1985, c. 373; 1988, c. 765; 2005, cc. 505, 587; 2009, cc. 813, 840.

§ 54.1-2726.1. Restricted volunteer license for certain dental hygienists

A. The Board may issue a restricted volunteer license to a dental hygienist who:

1. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;

2. Is sponsored and supervised by a dentist who holds an unrestricted license in the Commonwealth;

3. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

4. Has fulfilled the Board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

5. Has not failed a clinical examination within the past five years; and

6. Has had at least five years of clinical practice.

B. A person holding a restricted volunteer license under this section shall:

1. Only practice in public health or community free clinics that provide dental hygiene services to underserved populations;

2. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

3. Attest on a form provided by the Board that he will not receive remuneration directly or indirectly for providing dental hygiene services; and

4. Not be required to complete continuing education in order to renew such a license.

C. A dental hygienist with a restricted volunteer license issued under this section shall only practice dental hygiene under the direction of a dentist with an unrestricted license in Virginia.

D. A restricted voluntary license granted pursuant to this section shall expire on the June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship. Such license may be renewed annually thereafter as long as the supervising dentist continues to sponsor the licensee.

E. A dental hygienist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all dental hygienists practicing in Virginia.

1997, c. 719; 1998, c. 326; 2005, cc. 505, 587.

§ 54.1-2727. Display of license

Every person practicing dental hygiene shall at all times display his license in a conspicuous place in his office in plain view of patients.

The provisions of this section shall not apply to any dental hygienist while he is serving as a volunteer providing dental hygiene services in an underserved area of the Commonwealth under the auspices of a Virginia charitable corporation granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services.

1950, p. 985, § 54-200.14; 1972, c. 805; 1988, c. 765; 2006, c. 823.

§ 54.1-2728. Grounds for revocation or suspension

The Board may revoke or suspend the license of any dental hygienist for any of the causes set forth in § 54.1-2706, insofar as applicable to the practice of dental hygiene.

1950, p. 986, § 54-200.18; 1972, c. 805; 1988, c. 765; 2005, cc. 505, 587.

§ 54.1-2729. Continuing education

The Board shall promulgate regulations requiring continuing education for any dental hygienist license renewal or reinstatement. The Board may grant exceptions or exemptions from these continuing education requirements.

1993, c. 555; 1997, c. 3; 2004, c. 137; 2005, cc. 505, 587.

Article 4 - PRACTICE OF DENTAL ASSISTANTS

§ 54.1-2729.01. Practice of dental assistants

A. A person who is employed to assist a licensed dentist or dental hygienist by performing duties not otherwise restricted to the practice of a dentist, dental hygienist, or dental assistant II, as prescribed in regulations promulgated by the Board may practice as a dental assistant I.

B. A person who (i) has met the educational and training requirements prescribed by the Board; (ii) holds a certification from a credentialing organization recognized by the American Dental Association; and (iii) has met any other qualifications for registration as prescribed in regulations promulgated by the Board may practice as a dental assistant II. A dental assistant II may perform duties not otherwise restricted to the practice of a dentist or dental hygienist under the direction of a licensed dentist that are reversible, intraoral procedures specified in regulations promulgated by the Board.

2008, cc. 84, 264.

Chapter 27.01 - DIALYSIS PATIENT CARE TECHNICIANS

§ 54.1-2729.1. Scope of chapter

This chapter shall not preclude or affect the ability of unregulated persons to perform services relating to the technical elements of dialysis, such as equipment maintenance and preparation of dialyzers for reuse by the same patient.

2003, c. 995.

§ 54.1-2729.2. Dialysis patient care technician; definition

"Dialysis patient care technician" or "dialysis care technician" means a person who has obtained certification from an organization approved by the Board of Health Professions to provide, under the supervision of a licensed practitioner of medicine or a registered nurse, direct care to patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility. Such direct care may include, but need not be limited to, the administration of heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers in accordance with the order of a licensed physician, nurse practitioner or physician assistant. However, a person who has completed a training program in dialysis patient care may engage in provisional practice to obtain practical experience in providing direct patient care under direct and immediate supervision in accordance with § 54.1-3408, until he has taken and received the results of any examination required by a certifying organization approved by the Board or for 24 months from the date of initial practice, whichever occurs sooner.

2003, c. 995; 2006, c. 75.

§ 54.1-2729.3. Prohibition on use of title without holding certification; continuing competency requirements; fees; penalty

A. No person shall hold himself out to be or advertise or permit to be advertised that he is a dialysis patient care technician or dialysis care technician as defined in this chapter unless such person has obtained certification from an organization approved by the Board of Health Professions as examining candidates for appropriate competency or technical proficiency to perform as dialysis patient care technicians or dialysis care technicians.

B. The title restrictions provided by this section shall apply to the use of the terms "dialysis patient care technician" and "dialysis care technician" or any other term or combination of terms used alone or in combination with the terms "licensed," "certified," or "registered," as such terms also imply a minimum level of education, training, and competence. A person who is authorized for provisional practice to provide direct patient care while obtaining practical experience shall be identified as a "trainee" while working in a renal dialysis facility.

C. The Board of Health Professions may require such continuing competency training as it may deem necessary for dialysis patient care technicians or dialysis care technicians.

D. Any person who willfully violates the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

2003, c. 995; 2006, c. 75.

Chapter 27.1 - DIETITIANS AND NUTRITIONISTS

§ 54.1-2730. Scope of chapter

Nothing in this chapter shall preclude or affect in any fashion the ability of any person to provide any assessment, evaluation, advice, counseling, information or services of any nature that are otherwise allowed by law, whether or not such services are provided in connection with the marketing and sale of products.

1995, c. 391.

§ 54.1-2731. Prohibited terms; penalty

A. As used in this section, "nutritional genomics" means the consideration of biochemical or genetic information to evaluate how genetics affect gene function and how genetic variation alters nutrient response, including the study of how dietary and other lifestyle choices influence the function of humans at the molecular, cellular, organismal, and populational levels.

B. No person shall hold himself out to be or advertise or permit to be advertised that such person is a dietitian or nutritionist unless such person:

1. Has (i) received a baccalaureate or higher degree in nutritional sciences, community nutrition, public health nutrition, food and nutrition, dietetics, or human nutrition from a regionally accredited college or university and (ii) satisfactorily completed a program of supervised clinical experience approved by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics;

2. Has active registration through the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics;

3. Has an active certificate of the Board for Certification of Nutrition Specialists as a Certified Nutrition Specialist;

4. Has an active certification as a Diplomate of the American Clinical Board of Nutrition;

5. Has a current license or certificate as a dietitian or nutritionist issued by another state; or

6. Has the minimum requisite education, training and experience determined by the Board of Health Professions appropriate for such person to hold himself out to be, or advertise or allow himself to be advertised as, a dietitian or nutritionist.

The restrictions of this section apply to the use of the terms "dietitian" and "nutritionist" as used alone or in any combination with the terms "licensed, " "certified, " or "registered, " as those terms also imply a minimum level of education, training and competence.

C. Any person who meets the requirements set forth in subsection B who receives nutritional genomics testing information shall maintain such information in accordance with applicable federal and state law.

D. A person who does not meet the requirements of subsection B but who (i) has a baccalaureate degree with a major in food and nutrition or dietetics or has equivalent hours of food and nutrition coursework and (ii) has two years of work experience in nutrition or dietetics concurrent with or subsequent to completion of such degree may hold himself out as a dietitian or nutritionist, provided he is employed by or under contract to a government agency and practices solely within the scope of such employment.

E. Any person who willfully violates the provisions of this section is guilty of a Class 3 misdemeanor.

1995, c. 391; 2016, c. 91.

Chapter 28 - FUNERAL SERVICES

Article 1 - BOARD OF FUNERAL DIRECTORS AND EMBALMERS

§ 54.1-2800. Definitions

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

"Advertisement" means any information disseminated or placed before the public.

"At-need" means at the time of death or while death is imminent.

"Board" means the Board of Funeral Directors and Embalmers.

"Cremate" means to reduce a dead human body to ashes and bone fragments by the action of fire.

"Cremator" means a person or establishment that owns or operates a crematory or crematorium or cremates dead human bodies.

"Crematory" or "crematorium" means a facility containing a furnace for cremation of dead human bodies.

"Embalmer" means any person engaged in the practice of embalming.

"Embalming" means the process of chemically treating the dead human body by arterial injection and cavity treatment or, when necessary, hypodermic tissue injection to reduce the presence and growth of microorganisms to temporarily retard organic decomposition.

"Funeral directing" means the for-profit profession of directing or supervising funerals, preparing human dead for burial by means other than embalming, or making arrangements for funeral services or the financing of funeral services.

"Funeral director" means any person engaged in the practice of funeral directing.

"Funeral service establishment" means any main establishment, branch, or chapel that is permanently affixed to the real estate and for which a certificate of occupancy has been issued by the local building official where any part of the profession of funeral directing, the practice of funeral services, or the act of embalming is performed.

"Funeral service intern" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the Board.

"Funeral service licensee" means a person who is licensed in the practice of funeral services.

"In-person communication" means face-to-face communication and telephonic communication.

"Next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child aged 18 years or older, parent of a decedent aged 18 years or older, custodial parent or noncustodial parent of a decedent younger than 18 years of age, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship.

"Practice of funeral services" means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.

"Preneed" means at any time other than at-need.

"Preneed funeral contract" means any agreement where payment is made by the consumer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Preneed funeral planning" means the making of arrangements prior to death for (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a funeral plan or funeral service provider.

Code 1950, § 54-260.1; 1956, c. 220; 1972, c. 797, § 54-260.67; 1988, c. 765; 1989, c. 684; 1991, c. 539; 1997, c. 116; 1998, cc. 718, 867; 2003, c. 505; 2006, c. 56; 2015, cc. 534, 670.

§ 54.1-2801. Exemptions

A. The provisions of this chapter shall not apply to any officer of local or state institutions or to the burial of the bodies of inmates of state institutions when buried at the expense of the Commonwealth or any of its political subdivisions.

B. Any person holding a license as a funeral director or embalmer or an equivalent in another state, having substantially similar requirements as the Board, may apply to the Board for courtesy card privileges to remove bodies from and to arrange funerals or embalm bodies in this Commonwealth. However, these privileges shall not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia.

Code 1950, §§ 54-260.1, 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797, § 54-260.67; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765.

§ 54.1-2802. Board; appointment; terms; vacancies; meetings; quorum

The Board of Funeral Directors and Embalmers shall consist of nine members as follows: seven funeral service licensees of the Board with at least five consecutive years of funeral service practice in the Commonwealth immediately prior to appointment and two nonlegislative citizen members. The terms of office shall be for four years from July 1. Appointments shall be made annually on or before June 30 as the terms of the members respectively expire. Appointments to the Board should generally represent the geographical areas of the Commonwealth. The Board shall annually elect a president, a vice-president, and a secretary-treasurer.

The Board shall hold at least two meetings each year. In addition, the Board may meet as often as its duties require. Five members shall constitute a quorum.

1988, cc. 42, 765; 2000, c. 773; 2015, c. 534.

§ 54.1-2803. Specific powers and duties of Board

In addition to the general powers and duties conferred in this subtitle, the Board shall have the following specific powers and duties to:

1. Establish standards of service and practice for the funeral service profession in the Commonwealth.

2. Regulate and inspect funeral service establishments, their operation and licenses.

3. Require licensees and funeral service interns to submit all information relevant to their practice or business.

4. Enforce the relevant regulations of the Board of Health.

5. Enforce local ordinances relating to funeral service establishments.

6. Advise the Department of Health Professions of any training appropriate for inspectors serving as the Board's agents.

7. Establish, supervise, regulate and control, in accordance with the law, programs for funeral service interns.

8. Establish standards for and approve schools of mortuary science or funeral service.

9. Regulate preneed funeral contracts and preneed funeral trust accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts.

10. Inspect crematories and their operations.

Code 1950, §§ 54-260.3, 54-260.4, 54-260.6, 54-260.7, 54-260.11 through 54-260.14, 54-260.16 through 54-260.18, 54-260.20, 54-260.21, 54-260.45 through 54-260.49; 1956, c. 220; 1960, c. 61, § 54-260.69; 1966, c. 283, § 54-260.65; 1970, c. 385; 1972, c. 797, §§ 54-260.64, 54-260.68; 1978, c. 849; 1979, c. 650; 1980, c. 728; 1984, cc. 627, 704; 1988, c. 765; 1989, c. 684; 2000, c. 773; 2003, c. 505; 2006, c. 56.

§ 54.1-2804. Licensing authority

The Board of Funeral Directors and Embalmers is authorized to determine the qualifications to enable any person to engage in the practice of funeral service, preneed funeral planning, funeral directing, embalming and the operation of a funeral service establishment.

Code 1950, § 54-260.70; Code 1950, §§ 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765; 1989, c. 684 .

§ 54.1-2805. Engaging in the practice of funeral services or the business of preneed funeral planning or acting as a funeral director or embalmer without a license

It shall be unlawful for any person to engage in or hold himself out as engaging in the practice of funeral services or the business of preneed funeral planning, to operate a funeral service establishment, or to act as a funeral director or embalmer or hold himself out as such unless he is licensed by the Board. Engaging in the practice of funeral services, preneed funeral planning, operating a funeral service establishment, or acting as a funeral director or embalmer shall be recognized as that of a health profession.

1974, c. 257, § 54-260.73:1; 1988, c. 765; 1989, c. 684; 2000, c. 773.

§ 54.1-2806. Refusal, suspension, or revocation of license

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

1. Conviction of any felony or any crime involving moral turpitude;

2. Unprofessional conduct that is likely to defraud or to deceive the public or clients;

3. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;

4. False or misleading advertising or solicitation;

5. Solicitation at-need or any preneed solicitation using in-person communication by the licensee, his agents, assistants or employees; however, general advertising and preneed solicitation, other than in-person communication, shall be allowed;

6. Employment by the licensee of persons known as "cappers" or "steerers," or "solicitors," or other such persons to obtain the services of a holder of a license for the practice of funeral service;

7. Employment directly or indirectly of any agent, employee or other person, on part or full time, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

8. Direct or indirect payment or offer of payment of a commission to others by the licensee, his agents, or employees for the purpose of securing business;

9. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed activity;

10. Aiding or abetting an unlicensed person to practice within the funeral service profession;

11. Using profane, indecent, or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;

12. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum, or cemetery;

13. Violation of any statute, ordinance, or regulation affecting the handling, custody, care, or transportation of dead human bodies;

14. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to custody;

15. Knowingly making any false statement on a certificate of death;

16. Violation of any provisions of Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;

17. Failure to comply with § 54.1-2812, and to keep on file an itemized statement of funeral expenses in accordance with Board regulations;

18. Knowingly disposing of parts of human remains, including viscera, that are received with the body by the funeral establishment, in a manner different from that used for final disposition of the body, unless the persons authorizing the method of final disposition give written permission that the body parts may be disposed of in a manner different from that used to dispose of the body;

19. Violating or failing to comply with Federal Trade Commission rules regulating funeral industry practices;

20. Violating or cooperating with others to violate any provision of Chapter 1 (§ 54.1-100 et seq.), Chapter 24 (§ 54.1-2400 et seq.), this chapter, or the regulations of the Board of Funeral Directors and Embalmers or the Board of Health;

21. Failure to comply with the reporting requirements as set forth in § 54.1-2817 for registered funeral service interns;

22. Failure to provide proper and adequate supervision and training instruction to registered funeral service interns as required by regulations of the Board;

23. Violating any statute or regulation of the Board regarding the confidentiality of information pertaining to the deceased or the family of the deceased or permitting access to the body in a manner that is contrary to the lawful instructions of the next-of-kin of the deceased;

24. Failure to include, as part of the general price list for funeral services, a disclosure statement notifying the next of kin that certain funeral services may be provided off-premises by other funeral service providers;

25. Disciplinary action against a license, certificate, or registration issued by another state, the District of Columbia, or territory or possession of the United States;

26. Failure to ensure that a dead human body is maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed if it is to be stored for more than 48 hours prior to disposition. A dead human body shall be maintained in refrigeration and shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order; and

27. Mental or physical incapacity to practice his profession with safety to the public.

Code 1950, §§ 54-260.50, 54-260.59; 1956, c. 220; 1972, c. 797, § 54-260.74; 1979, c. 720; 1981, c. 258; 1986, c. 91; 1988, c. 765; 1989, c. 684; 1990, c. 363; 1996, c. 142; 2003, c. 505; 2006, c. 56; 2010, c. 324; 2015, c. 534.

§ 54.1-2807. Other prohibited activities

A. A person licensed for the practice of funeral service shall not (i) remove or embalm a body when he has information indicating the death was such that an investigation by the Office of the Chief Medical Examiner is required pursuant to § 32.1-283 or 32.1-285.1 or (ii) cremate or bury at sea a body until he has obtained permission of the Office of the Chief Medical Examiner as required by § 32.1-309.3.

B. Except as provided in § 32.1-301 and Chapter 8.1 (§ 32.1-309.1 et seq.) of Title 32.1, funeral service establishments shall not accept a dead human body from any public officer, except the Chief Medical Examiner, an Assistant Chief Medical Examiner, or a medical examiner appointed pursuant to § 32.1-282, or from any public or private facility or person having a professional relationship with the decedent without having first inquired about the desires of the next of kin and the persons liable for the funeral expenses of the decedent. The authority and directions of any

next of kin shall govern the disposal of the body, subject to the provisions of § 54.1-2807.01 or 54.1-2825.

Any funeral service establishment violating this subsection shall not charge for any service delivered without the directions of the next of kin. However, in cases of accidental or violent death, the funeral service establishment may charge and be reimbursed for the removal of bodies and rendering necessary professional services until the next of kin or the persons liable for the funeral expenses have been notified.

C. No company, corporation, or association engaged in the business of paying or providing for the payment of the expenses for the care of the remains of deceased certificate holders or members or engaged in providing life insurance when the contract might or could give rise to an obligation to care for the remains of the insured shall contract to pay or pay any benefits to any licensee of the Board or other individual in a manner which could restrict the freedom of choice of the representative or next of kin of a decedent in procuring necessary and proper services and supplies for the care of the remains of the decedent.

D. No person licensed for the practice of funeral service or preneed funeral planning or any of his agents shall interfere with the freedom of choice of the general public in the choice of persons or establishments for the care of human remains or of preneed funeral planning or preneed funeral contracts.

E. This section shall not be construed to apply to the authority of any administrator, executor, trustee, or other person having a fiduciary relationship with the decedent.

Code 1950, §§ 54-260.50, 54-260.59; 1956, c. 220; 1972, c. 797, § 54-260.74; 1979, c. 720; 1981, c. 258; 1986, c. 91; 1988, c. 765; 1989, c. 684; 1993, c. 965; 2005, c. 905; 2010, c. 383; 2014, cc. 228, 583.

§ 54.1-2807.01. When next of kin disagree

A. In the absence of a designation under § 54.1-2825, when there is a disagreement among a decedent's next of kin concerning the arrangements for his funeral or the disposition of his remains, any of the next of kin may petition the circuit court where the decedent resided at the time of his death to determine which of the next of kin shall have the authority to make arrangements for the decedent's funeral or the disposition of his remains. The court may require notice to and the convening of such of the next of kin as it deems proper.

B. In determining the matter before it, the court shall consider the expressed wishes, if any, of the decedent, the legal and factual relationship between or among the disputing next of kin and between each of the disputing next of kin and the decedent, and any other factor the court considers relevant to determine who should be authorized to make the arrangements for the decedent's funeral or the disposition of his remains.

2010, c. 383.

§ 54.1-2807.02. Absence of next of kin

In the absence of a next of kin, a person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 who may exercise the powers conferred in the order of appointment or by § 64.2-2019, or upon the failure or refusal of such next of kin, designated person, agent, or guardian to accept responsibility for the disposition of the decedent, then any other person 18 years of age or older who is able to provide positive identification of the deceased and is willing to pay for the costs associated with the disposition of the decedent's remains shall be authorized to make arrangements for such disposition of the decedent's remains. If a funeral service establishment or funeral service licensee makes arrangements with a person other than a next of kin, designated person, agent, or guardian in accordance with this section, then the funeral service licensee or funeral service establishment shall be immune from civil liability unless such act, decision, or omission resulted from bad faith or malicious intent.

2014, c. 355.

§ 54.1-2807.1. Confidentiality of information on infectious diseases

All information received by any person practicing funeral services or his agent regarding the fact that any dead body which they have received harbors an infectious disease shall be confidential, and disclosure of such information shall be grounds for disciplinary action against the funeral service licensee pursuant to § 54.1-2806.

Notification that a dead body harbors an infectious disease will not constitute grounds for any funeral director's refusal to accept the body.

1988, c. 836, § 54-260.74:2.

§ 54.1-2808. Repealed

Repealed by Acts 1998, c. 867.

§ 54.1-2808.1. Disposition of cremains

Except as otherwise provided in § 54.1-2808.2, a funeral director may dispose of the cremains of an individual by interment, entombment, inurnment, or by scattering of the cremains, if after 120 days from the date of cremation, the contracting agent has not claimed the cremains or instructed the funeral director as to final disposition. The funeral director shall keep a permanent record of all cremains which identifies the method and site of final disposition. The costs and all reasonable expenses incurred in disposing of the cremains shall be borne by the contracting agent. Upon the disposition of the cremains, the funeral director shall not be liable for the cremains or for the method of final disposition. Except as otherwise provided in § 54.1-2808.2, any funeral director in possession of unclaimed cremains prior to July 1, 1993, may dispose of such cremains in accordance with the provisions of this section. However, no funeral director shall, without written permission of the contracting agent, dispose of cremains in a manner or a location in which the cremains of the deceased are commingled, except in the scattering of cremains at sea, by air, or in

an area used exclusively for such purpose, or place, temporarily, the cremains of persons in the same container or urn.

For the purposes of this section and § 54.1-2808.2, "contracting agent" means any person, organization, association, institution, or group of persons who contracts with a funeral director or funeral establishment for funeral services.

1993, c. 531; 2012, cc. 24, 120; 2015, c. 138.

§ 54.1-2808.2. Identification of unclaimed cremains of veterans and eligible dependents

A. For the purposes of this section:

"Eligible dependent" means a veteran's spouse, a veteran's unmarried child younger than 21 years of age, or veteran's unmarried adult child who before the age of 21 became permanently incapable of self-support because of physical or mental disability.

"Veterans service organization" means an association or other entity organized for the benefit of veterans that has been recognized by the U.S. Department of Veterans Affairs or chartered by Congress and any employee or representative of such association or entity.

B. If the contracting agent has not claimed the cremains or instructed the funeral director as to final disposition within 90 days from the date of cremation, the funeral director shall provide names and any other identifying information of the unclaimed cremains to the Department of Veterans Services or a veterans service organization in order for the Department or organization to determine if the unclaimed cremains are those of a veteran or eligible dependent. The names and any personal identifying information submitted by a funeral director to the Department of Veterans Services or veterans service organization in compliance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. The Department of Veterans Services or veterans service organization shall notify the funeral director within 45 days of receipt of the information required by subsection B if the cremains are those of a veteran or eligible dependent and, if so, whether such veteran or eligible dependent is eligible for burial in a veterans cemetery in order to permit the transfer of the unclaimed cremains to a veterans cemetery. If the cremains are those of an eligible veteran or eligible dependent, a funeral director may transfer the cremains to the Department of Veterans Services or a veterans service organization for the purpose of disposition of such cremains.

D. No disposal of the unclaimed cremains of an eligible veteran or eligible dependent shall be made until the funeral director has notified the Department of Veterans Services or a veterans service organization and has received a determination as to whether the cremains are those of an eligible veteran or eligible dependent. Absent bad faith or malicious intent, no funeral director who transfers the cremains of a veteran or eligible dependent to the Department of Veterans Services or a veterans service organization for purposes of disposition or a veterans service organization

that receives cremains for the purposes of disposition as provided in this section shall be liable for civil negligence.

2012, cc. 24, 120; 2015, c. 138.

§ 54.1-2809. Penalties

Any person, partnership, corporation, association, or its agents or employees who violate any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor.

Code 1950, § 54-260.61; 1956, c. 220; 1972, c. 797, § 54-260.75; 1988, c. 765.

Article 2 - LICENSURE OF FUNERAL ESTABLISHMENTS

§ 54.1-2810. Licensure of funeral establishments

No person shall conduct, maintain, manage or operate a funeral establishment unless a license for each such establishment has been issued by the Board. No license to operate a funeral establishment shall be issued by the Board unless each such funeral establishment has in charge, full time, a person licensed for the practice of funeral service or a licensed funeral director. Applications for funeral establishment licenses shall be made on forms furnished by the Board and filed by the owner or the registered agent of the corporation with the Board.

Each funeral establishment license shall expire annually at a time prescribed by Board regulation. A license may be renewed within 30 days of its expiration. Upon expiration of the license, the Board shall notify each licensee of the provisions of this section. Renewal of a license after the expiration of the 30-day period shall be in the discretion of the Board.

Violations of any provisions of this chapter or any Board regulations by any person, or an officer, agent or employee with the knowledge or consent of any person operating a funeral establishment shall be considered sufficient cause for suspension or revocation of the funeral establishment license.

An operator of a funeral establishment shall not allow any person licensed for the practice of funeral service to operate out of his funeral establishment unless the licensee is the operator or an employee of the operator of a licensed funeral establishment.

If the manager of the funeral service establishment is unable, for any reason, to exercise adequate supervision, direction, management, and control of the funeral establishment, the owner shall designate any funeral service licensee to serve as a temporary manager and notify the Board in writing within 14 days. If such inability of the manager exceeds 90 days or is expected to exceed 90 days, a new manager shall be designated and registered with the Board. At the conclusion of the 90-day period for designation of a new manager, a funeral service establishment which has failed to designate a new manager shall not operate as a funeral service establishment.

When licensing funeral establishments, the Board may grant a hardship waiver from the requirement for a full-time manager licensed for the practice of funeral service or licensed as a funeral director, allowing the operation of two funeral establishments having in charge one full-time person

licensed for the practice of funeral service or one licensed funeral director who divides his time between the two funeral establishments. Prior to granting a hardship waiver, the Board shall find that (i) the two establishments have been in operation for at least three years; (ii) the combined average number of funeral calls at the two establishments, as submitted in monthly reports to the Division of Vital Records and Health Statistics of the Virginia Department of Health, over the previous three years is no more than 85 per year; and (iii) the distance between the two establishments is 50 miles or less.

Prior to granting a renewal of a license granted under a hardship waiver, the Board shall determine whether the requirements for license renewal under such waiver continue to exist.

Code 1950, §§ 54-260.39, 54-260.40; 1956, c. 220; 1972, c. 797, § 54-260.73; 1974, 164; 1978, c. 849; 1988, c. 765; 1996, c. 757; 2000, c. 773; 2013, c. 108.

§ 54.1-2811. Facility requirements

A funeral service establishment shall contain a preparation room equipped with a tile, cement or other waterproof floor, proper drainage and ventilation, the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition, and separate restroom facilities.

A funeral service establishment having more than one location at which it performs funeral services shall not be required to maintain more than one preparation room.

The Board may adopt regulations and classifications to prescribe proper drainage and ventilation and necessary instruments and supplies in preparation rooms and separate restroom facilities.

Code 1950, §§ 54-260.39, 54-260.40; 1956, c. 220; 1972, c. 797, § 54-260.73; 1974, 164; 1978, c. 849; 1988, c. 765.

§ 54.1-2811.1. Handling and storage of human remains

A. Upon taking custody of a dead human body, a funeral service establishment shall maintain such body in a manner that provides complete coverage of the body and that is resistant to leakage or spillage, except during embalming or preparation of an unembalmed body for final disposition; restoration and dressing of a body in preparation for final disposition; and viewing during any visitation and funeral service.

B. If a dead human body is to be stored for more than 48 hours prior to disposition, a funeral services establishment having custody of such body shall ensure that the dead human body is maintained in refrigeration at no more than approximately 40 degrees Fahrenheit or embalmed. A dead human body shall be maintained in refrigeration and shall not be embalmed in the absence of express permission by a next of kin of the deceased or a court order.

C. If a dead human body is to be stored for more than 10 days prior to disposition at a location other than a funeral service establishment, the funeral service establishment shall disclose to the contract buyer the location where the body is to be stored and the method of storage.

D. Funeral services establishments, crematories, or transportation services shall not transport animal remains together with dead human bodies. Further, animal remains shall not be refrigerated in a unit where dead human bodies are being stored.

2010, c. 823.

§ 54.1-2812. Itemized statement and general price list of funeral expenses to be furnished
Every person licensed pursuant to the provisions of this chapter shall furnish a written general price list and a written itemized statement of charges in connection with the care and disposition of the body of a deceased person.

Individuals inquiring in person about funeral arrangements or the prices of funeral goods shall be given the general price list. Upon beginning discussion of funeral arrangements or the selection of any funeral goods or services, the general price list must be offered by the funeral licensee.

The itemized statement shall include, but not be limited to, the following charges: casket, other funeral merchandise, vault or other burial receptacle, facilities used, transportation costs, embalming, preparation of the body, other professional services used and disclosure statements required by the Federal Trade Commission, which shall be set forth in a clear and conspicuous manner.

Further, there shall be included a statement of all anticipated cash advances and expenditures requested by the person contracting for the funeral arrangements and such other items as required by regulation of the Board of Funeral Directors and Embalmers. The statement shall be furnished to the person contracting for funeral arrangements at the time such arrangements are made if the person is present and, if not present, no later than the time of the final disposition of the body.

The general price list and itemized statement of funeral expenses shall comply with forms prescribed by regulation of the Board. All regulations promulgated herewith shall promote the purposes of this section.

1979, c. 8, § 54-260.71:1; 1986, c. 42; 1988, c. 765.

Article 3 - LICENSURE OF THE PRACTICE OF FUNERAL SERVICE, FUNERAL DIRECTORS AND EMBALMERS

§ 54.1-2813. License for the practice of funeral service
To be licensed for the practice of funeral service, a person shall (i) be at least 18 years of age; (ii) hold a high school diploma or its equivalent; (iii) have completed a funeral service internship prescribed by the Board in regulation; (iv) have graduated from a school of mortuary science or funeral service approved by the Board; and (v) have passed the examination for licensure.

The Board, in its discretion, may license an individual convicted of a felony if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored.

The Board, in its discretion, may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

Code 1950, § 54-260.70; Code 1950, §§ 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765; 1990, c. 363; 2005, c. 477; 2006, c. 56.

§ 54.1-2814. Examination

Each applicant for license for the practice of funeral service shall be examined in writing on:

1. Basic and health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health;

2. Funeral service arts and sciences including embalming and restorative art;

3. Funeral service administration including accounting, funeral law, psychology, and funeral principles, directing and management.

The Board may recognize other examinations that it considers equivalent to its examination.

Code 1950, § 54-260.70; Code 1950, §§ 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765; 2000, c. 773.

§ 54.1-2814.1. Registration as a cremator

A. No crematorium, cemeterian, memorial society, or other establishment, organization, or person shall cremate a dead human body without having registered with the Board as a cremator.

B. The Board shall prescribe the procedures for registration under this section. Such procedures shall include a requirement that any crematory registered with the Board that engages in the practice of funeral services operate in compliance with the provisions § 54.1-2810. However, nothing in this subsection shall require a crematory registered with the Board to obtain a license as a funeral service establishment as long as the crematory provides cremation services directly to or for a licensed funeral service establishment only and not to the general public.

C. The Board may suspend or revoke any crematory registration or deny any application for such registration, or refuse to issue or renew any such registration, if the Board finds that the applicant or registrant has violated any provision of this chapter, the Board's regulations, or if the Board finds the crematory has operated or is operating in a manner that endangers the health, safety or welfare of the public.

2000, c. 773; 2003, c. 505.

§ 54.1-2815. Application for license; how license signed; duration

All applications for examination for a license for the practice of funeral service shall be upon forms furnished by the Board.

All licenses shall be issued or renewed for a period prescribed by the Board, not exceeding two years.

1978, c. 849, § 54-260.70:1; 1988, c. 765; 2015, c. 534.

§ 54.1-2816. License renewal; failure to return renewal form

Prior to the expiration of a license, the Board shall provide to each person licensed to practice funeral service, embalming, or funeral directing a renewal notice and application to be submitted to the Board together with the prescribed fee. Upon request, the Board shall provide renewal notices by mail to any licensee. The license of any person who does not submit the completed form prior to the date of expiration shall automatically expire. The Board shall immediately notify the person of the expiration and the reinstatement requirements. The Board shall reinstate an expired license upon receipt, within 30 days of the notice of expiration, of the completed form and the prescribed fee. Reinstatement after the 30-day period shall be at the discretion of the Board.

1978, c. 849, § 54-260.70:2; 1988, c. 765; 2005, c. 477.

§ 54.1-2816.1. Continuing education requirements; promulgation of regulations

A. The Board shall promulgate regulations governing continuing education requirements for funeral services licensees, funeral directors and embalmers licensed by the Board.

B. The Board shall approve criteria for continuing education courses, requiring no more than five hours per year, that are directly related to the respective license and scope of practice of funeral service licensees, funeral directors and embalmers. Approved continuing education courses shall include, but not be limited to, at least one hour per year covering compliance with federal or state laws and regulations governing the profession, and at least one hour per year covering preneed funeral arrangements. Course providers may be required to register continuing education courses with the Board pursuant to Board regulations. The Board shall not allow continuing education credit for courses where the principal purpose of the course is to promote, sell or offer goods, products or services to funeral homes.

C. All course providers shall furnish written certification to licensees of the Board attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of two years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of two years the written certification issued by any Board-approved provider of continuing education courses. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary, to ensure compliance with continuing education requirements.

D. The Board shall have the authority to grant exemptions or waivers in cases of certified illness or undue hardship.

E. The Board may provide for an inactive status for those licensees who do not practice in Virginia. The Board may adopt regulations reducing or waiving continuing education requirements for any licensee granted such inactive status. However, no licensee granted inactive status may have their license changed to active status without first obtaining additional continuing education hours as

may be determined by the Board. No person or registrant shall practice in Virginia as an embalmer, funeral director, or funeral service licensee unless he holds a current, active license.

2002, c. 270; 2008, c. 396; 2012, c. 497.

§ 54.1-2817. Funeral service interns

A person desiring to become a funeral service intern shall apply on a form provided by the Board. The applicant shall attest that he holds a high school diploma or its equivalent. The Board, in its discretion, may approve an application to be a funeral service intern for an individual convicted of a felony, if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The Board shall not, however, approve an application to be a funeral service intern for any person convicted of embezzlement or of violating subsection B of § 18.2-126.

The Board, in its discretion, may refuse to approve an application to be a funeral service intern for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

When the Board is satisfied as to the qualifications of an applicant, it shall issue a certificate of internship. When a funeral service intern wishes to receive in-service training from a person licensed for the practice of funeral service, a request shall be submitted to the Board. If such permission is granted and the funeral service intern later leaves the proctorship of the licensee whose service has been entered, the licensee shall give the funeral service intern an affidavit showing the length of time served with him. The affidavit shall be filed with the Board and made a matter of record in that office. Any funeral service intern seeking permission to continue in-service training shall submit a request to the Board.

A certificate of internship shall be renewable as prescribed by the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered funeral service intern at his last known address, a notice that the renewal fee is due and that, if not paid by the prescribed time, a penalty fee shall be due in addition to the renewal fee.

The registration of any funeral service intern who is in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of his service. The Board may also waive the renewal fees for such military personnel.

All registered funeral service interns shall report to the Board on a schedule prescribed by the Board upon forms provided by the Board, showing the work which has been completed during the preceding period of internship. The data contained in the report shall be certified as correct by the person licensed for the practice of funeral service under whom he has served during this period and by the person licensed for the practice of funeral service owning or managing the funeral service establishment.

Before such funeral service intern becomes eligible to be examined for the practice of funeral service, evidence shall be presented along with an affidavit from any licensee under whom the intern

worked showing that the intern has assisted in embalming at least 25 bodies and that the intern has assisted in conducting at least 25 funerals. In all applications of funeral service interns for licenses for the practice of funeral service, the eligibility of the applicant shall be determined by the records filed with the Board. The successful completion by any person of the internship shall not entitle him to any privilege except to be examined for such license.

Credit shall not be allowed for any period of internship that has been completed more than three years prior to application for license or more than five years prior to examination for license. If all requirements for licensure are not completed within five years of initial application, the Board may deny an additional internship. A funeral service intern may continue to practice for up to 90 days from the completion of his internship or until he has taken and received the results of all examinations required by the Board. However, the Board may waive such limitation for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service or if the Board determines that enforcement of the limitation will create an unreasonable hardship.

The Board shall have power to suspend or revoke a certificate of internship for violation of any provision of this chapter.

No more than two funeral service interns shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for a registered funeral service intern must be actively employed by or under contract with a funeral establishment.

Code 1950, §§ 54-260.34 through 54-260.38; 1956, c. 220; 1970, c. 513, § 54-260.72; 1972, c. 797; 1973, c. 296; 1974, c. 157; 1978, c. 849; 1981, c. 258; 1986, c. 43; 1988, c. 765; 2005, c. 477; 2006, c. 56.

§ 54.1-2818. Registration and display of licenses

A copy of all licenses shall be displayed in a conspicuous place in each establishment in which the licensee practices.

Code 1950, § 54-260.31; 1956, c. 220; 1972, c. 797, § 54-260.71; 1988, c. 765.

§ 54.1-2818.1. Prerequisites for cremation

No dead human body shall be cremated without permission of the Office of the Chief Medical Examiner as required by § 32.1-309.3 and visual identification of the deceased by the next-of-kin or his representative, who may be any person designated to make arrangements for the disposition of the decedent's remains pursuant to § 54.1-2825, an agent named in an advance directive pursuant to § 54.1-2984, or any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 who may exercise the powers conferred in the order of appointment or by § 64.2-2019, or, in cases in which the next of kin or his representative fails or refuses to provide visual identification of the deceased, by any other person 18 years of age or older who is able to provide positive identification of the deceased. If no such next of kin or his representative or other

person 18 years of age or older is available or willing to make visual identification of the deceased, such identification shall be made by a member of the primary law-enforcement agency of the city or county in which the person or institution having initial custody of the body is located, pursuant to court order. When visual identification is not feasible, other positive identification of the deceased may be used as a prerequisite for cremation. Unless such act, decision, or omission resulted from bad faith or malicious intent, the funeral service establishment, funeral service licensee, crematory, cemetery, primary law-enforcement officer, sheriff, county, or city shall be immune from civil liability for any act, decision, or omission resulting from cremation. Nothing in this section shall prevent a law-enforcement agency other than the primary law-enforcement agency from performing the duties established by this section if so requested by the primary law-enforcement agency and agreed to by the other law-enforcement agency.

1998, c. 867; 2010, c. 377; 2011, c. 88; 2014, cc. 228, 355, 583; 2015, c. 670.

§ 54.1-2818.2. Inapplicability to officers of state and local institutions

Nothing in this article shall be applicable to any officer of any institution operated by the Commonwealth or by any county, city or town in the performance of his duties as such.

1998, c. 867.

§ 54.1-2818.3. Applications for registration required

Any crematory shall apply for and receive a registration from the Board as a registered crematory. However, this section shall not supersede or restrict the provisions of § 54.1-2814.1.

1998, c. 867; 2003, c. 505.

§ 54.1-2818.4. Immunity from liability for services after organ and tissue donation

Unless such act, decision, or omission resulted from bad faith or malicious intent, any funeral service establishment, funeral service licensee, crematory, or registered crematory that receives a body following donation of organs, tissues, or eyes shall be immune from civil liability for any failure to restore such decedent's form or features in a manner acceptable for viewing prior to the final disposition of the remains.

2009, c. 811.

Article 4 - REGISTRATION OF SURFACE TRANSPORTATION AND REMOVAL SERVICES

§ 54.1-2819. Registration of surface transportation and removal services; penalty

Any person or private business, except a common carrier engaged in interstate commerce, the Commonwealth and its agencies, or an emergency medical services agency holding a permit issued by the Commissioner of Health pursuant to § 32.1-111.6, shall apply for and receive a registration as a transportation and removal service in order to be authorized to engage in the business of surface transportation or removal of dead human bodies in the Commonwealth.

Surface transportation and removal services shall not arrange or conduct funerals, provide for the care or preparation, including embalming, of dead human bodies, or sell or provide funeral-related goods and services without the issuance of a funeral service establishment license.

The Board shall promulgate regulations for such registration including proper procedures in the handling of all dead human bodies being transported, the application process for registration, and the establishment of registration fees. These regulations shall not require the use of a casket for transportation. No licensed funeral service establishment shall be required to receive such registration in addition to its funeral service establishment license. However, such establishment shall be subject to the regulations pertaining to transportation and removal services.

Every applicant for registration as a surface transportation and removal service shall include the name of a manager of record on any application for registration and shall notify the Board within 30 days of any change in the manager of record. Such notice shall include the name of the new manager of record of the surface transportation and removal service.

All registrations as a surface transportation and removal service shall be renewed annually and no person or private business shall engage in the business as a surface transportation and removal service without holding a valid registration.

Any surface transportation or removal service that is not registered or persons who knowingly engage in transportation or removal services without registration shall be subject to the disciplinary actions provided in this chapter.

This section shall not be construed to prohibit private individuals from transporting or removing the remains of deceased family members and relatives either by preference or in observation of religious beliefs and customs.

1984, c. 761, § 54-260.74:1; 1986, c. 198; 1988, c. 765; 2006, c. 555; 2015, cc. 110, 534.

Article 5 - PRENEED FUNERAL CONTRACTS

§ 54.1-2820. Requirements of preneed funeral contracts

A. It shall be unlawful for any person residing or doing business within this Commonwealth, to make, either directly or indirectly by any means, a preneed funeral contract unless the contract:

1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;

2. Identifies the seller, seller's license number and contract buyer and the person for whom the contract is purchased if other than the contract buyer;

3. Contains a complete description of the supplies or services purchased;

4. Clearly discloses whether the price of the supplies and services purchased is guaranteed;

5. States if funds are required to be trusted pursuant to § 54.1-2822, the amount to be trusted, the name of the trustee, the disposition of the interest, the fees, expenses and taxes which may be deducted from the interest and a statement of the buyer's responsibility for taxes owed on the interest;

6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;

7. Provides that any person who makes payment under the contract may terminate the agreement at any time prior to the furnishing of the services or supplies contracted for except as provided pursuant to subsection B; if the purchaser terminates the contract within 30 days of execution, the purchaser shall be refunded all consideration paid or delivered, together with any interest or income accrued thereon; if the purchaser terminates the contract after 30 days, the purchaser shall be refunded any amounts required to be deposited under § 54.1-2822, together with any interest or income accrued thereon;

8. Provides that if the particular supplies and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and the representative of the deceased shall have the right to choose the supplies or services to be substituted;

9. Discloses any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or prearrangement guarantee; and

10. Complies with all disclosure requirements imposed by the Board.

If the contract seller will not be furnishing the supplies and services to the purchaser, the contract seller must attach to the preneed funeral contract a copy of the seller's agreement with the provider.

B. Subject to the requirements of § 54.1-2822, a preneed funeral contract may provide for an irrevocable trust or an amount in an irrevocable trust that is specifically identified as available exclusively for funeral or burial expenses, where:

1. A person irrevocably contracts for funeral goods and services, such person funds the contract by prepaying for the goods and services, and the funeral provider residing or doing business within the Commonwealth subsequently places the funds in a trust; or

2. A person establishes an irrevocable trust naming the funeral provider as the beneficiary; however, such person shall have the right to change the beneficiary to another funeral provider pursuant to § 54.1-2822.

C. If a life insurance or annuity contract is used to fund the preneed funeral contract, the life insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually by a factor equal to the annualized Consumer Price Index as published by the Bureau of Labor

Statistics of the United States Department of Labor, or a benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest or dividends, which for the first 15 years shall be compounded annually at a rate of at least five percent. In any event, interest or dividends shall continue to be paid after 15 years. In addition, the following must also be disclosed as prescribed by the Board:

1. The fact that a life insurance policy or annuity contract is involved or being used to fund the preneed contract;

2. The nature of the relationship among the soliciting agent, the provider of the supplies or services, the prearranger and the insurer;

3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract and the nature and existence of any guarantees relating to the preneed contract; and

4. The impact on the preneed contract of (i) any changes in the life insurance policy or annuity contract including but not limited to changes in the assignment, beneficiary designation or use of the proceeds, (ii) any penalties to be incurred by the policyholder as a result of failure to make premium payments, (iii) any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract, and (iv) all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

D. When the consideration consists in whole or in part of any real estate, the contract shall be recorded as an attachment to the deed whereby such real estate is conveyed, and the deed shall be recorded in the clerk's office of the circuit court of the city or county in which the real estate being conveyed is located.

E. If any funeral supplies are sold and delivered prior to the death of the subject for whom they are provided, and the seller or any legal entity in which he or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the seller during such period of storage.

1989, c. 684; 1991, c. 721; 1992, c. 635; 1998, c. 738; 1999, c. 819; 2003, cc. 663, 673; 2007, c. 621.

§ 54.1-2821. Exemptions

This article shall not apply to the preneed sale of cemetery services or supplies regulated under Chapter 23.1 (§ 54.1-2310 et seq.) of this title.

1989, c. 684 .

§ 54.1-2822. Deposit of money received pursuant to preneed funeral contract

A. Within 30 days following the receipt of any money paid pursuant to any preneed funeral contract or interest or income accrued thereon, unless such amounts are paid to fund either an

annuity or an insurance policy which will be used to purchase the funeral supplies or services contracted for, the person receiving such amounts shall deposit all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is not guaranteed, or ninety percent of all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is guaranteed, in a special account in a bank or savings institution doing business in this Commonwealth.

B. The funds shall be deposited in separate, identifiable trust accounts setting forth the names of the depositor, the trustee for the person who is the subject of the contract, the name of the person who will render the funeral services and the name of the person who is the subject of the contract. The purchaser shall have the right to change the beneficiary and trustee of the trust at any time prior to the furnishing of the services or supplies contracted for under the preneed funeral contract. Trust account records shall be subject to examination by the Board.

C. No funeral director, embalmer, funeral service licensee, owner of a funeral establishment, or any person employed by or having an interest in a funeral establishment shall serve as trustee of a trust account for which any such person, or any funeral establishment owned by or employing such person or in which such person has an interest, has been named the beneficiary or designated the provider of services, unless two or more such persons are named and serve as trustees and are required to act jointly in such fiduciary capacity. Subject to the terms of this subsection, and notwithstanding any other provision of law, the trustee for any such trust account may be an incorporated association that is authorized to sell burial association group life insurance certificates in the Commonwealth, as described in the definition of limited burial insurance authority in § 38.2-1800, whose principal purpose is to assist its members in (i) financial planning for their funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral, burial, and related expenses.

1989, c. 684; 1992, c. 337; 2007, c. 621.

§ 54.1-2822.1. Funeral establishments to maintain preneed records

Every person selling preneed funeral contracts within this Commonwealth shall keep and maintain such records of preneed transactions, including copies of preneed contracts, as may be prescribed by the Board. All such records shall be maintained on the premises of the funeral establishment providing the preneed services and supplies, except that preneed records of funeral establishments under common ownership, control, or management may be maintained at a single location within this Commonwealth.

1995, c. 26.

§ 54.1-2823. Exemption from levy, garnishment and distress

Any money, personal property or real property paid, delivered or conveyed subject to § 54.1-2822 shall be exempt from levy, garnishment or distress.

1989, c. 684 .

§ 54.1-2824. Declaration of trust in consideration other than money

Within thirty days following the receipt of any personal property other than money delivered pursuant to any preneed funeral contract, the person receiving it, if title thereto is transferred, or the person making such delivery, if title thereto is not transferred, shall execute in writing a declaration of trust setting forth all the terms, conditions and considerations upon which the personal property is delivered, which shall be acknowledged in the same manner as the contract and recorded in the clerk's office of the circuit court of the city or county in which the person delivering the personal property resides; provided, that if such terms, conditions and considerations are contained in the preneed funeral contract, the contract shall be recorded.

1989, c. 684 .

§ 54.1-2825. Person to make arrangements for funeral and disposition of remains

A. Any person may designate in a signed and notarized writing, which has been accepted in writing by the person so designated, an individual who shall make arrangements and be otherwise responsible for his funeral and the disposition of his remains, including cremation, interment, entombment, or memorialization, or some combination thereof, upon his death. Such designee shall have priority over all persons otherwise entitled to make such arrangements, provided that a copy of the signed and notarized writing is provided to the funeral service establishment and to the cemetery, if any, no later than 48 hours after the funeral service establishment has received the remains. Nothing in this section shall preclude any next of kin from paying any costs associated with any funeral or disposition of any remains, provided that such payment is made with the concurrence of any person designated to make arrangements.

B. In cases in which a person has designated in a U.S. Department of Defense Record of Emergency Data (DD Form 93) or any successor form an individual to make arrangements for his funeral and disposition of his remains, and such person dies while serving in any branch of the United States Armed Forces as defined in 10 U.S.C. § 1481, such designee shall be responsible for making such arrangements.

1989, c. 684; 1998, c. 718; 2010, cc. 324, 380.

Chapter 29 - MEDICINE AND OTHER HEALING ARTS

Article 1 - GENERAL PROVISIONS

§ 54.1-2900. Definitions

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

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

"Auricular acupuncture" means the subcutaneous insertion of sterile, disposable acupuncture needles in predetermined, bilateral locations in the outer ear when used exclusively and specifically in the context of a chemical dependency treatment program.

"Board" means the Board of Medicine.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957.

"Certified registered nurse anesthetist" means an advanced practice registered nurse who is certified in the specialty of nurse anesthesia, who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957, and who practices under the supervision of a doctor of medicine, osteopathy, podiatry, or dentistry but is not subject to the practice agreement requirement described in § 54.1-2957.

"Genetic counselor" means a person licensed by the Board to engage in the practice of genetic counseling.

"Healing arts" means the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

"Medical malpractice judgment" means any final order of any court entering judgment against a licensee of the Board that arises out of any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

"Medical malpractice settlement" means any written agreement and release entered into by or on behalf of a licensee of the Board in response to a written claim for money damages that arises out of any personal injuries or wrongful death, based on health care or professional services rendered, or that should have been rendered, by a health care provider, to a patient.

"Nurse practitioner" means an advanced practice registered nurse who is jointly licensed by the Boards of Medicine and Nursing pursuant to § 54.1-2957.

"Occupational therapy assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed occupational therapist to assist in the practice of occupational therapy.

"Patient care team" means a multidisciplinary team of health care providers actively functioning as a unit with the management and leadership of one or more patient care team physicians for the purpose of providing and delivering health care to a patient or group of patients.

"Patient care team physician" means a physician who is actively licensed to practice medicine in the Commonwealth, who regularly practices medicine in the Commonwealth, and who provides management and leadership in the care of patients as part of a patient care team.

"Physician assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed doctor of medicine, osteopathy, or podiatry.

"Practice of acupuncture" means the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. The practice of acupuncture does not include the use of physical therapy, chiropractic, or osteopathic manipulative techniques; the use or prescribing of any drugs, medications, serums or vaccines; or the procedure of auricular acupuncture as exempted in § 54.1-2901 when used in the context of a chemical dependency treatment program for patients eligible for federal, state or local public funds by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.

"Practice of athletic training" means the prevention, recognition, evaluation, and treatment of injuries or conditions related to athletic or recreational activity that requires physical skill and utilizes strength, power, endurance, speed, flexibility, range of motion or agility or a substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition; and subsequent treatment and rehabilitation of such injuries or conditions under the direction of the patient's physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry, while using heat, light, sound, cold, electricity, exercise or mechanical or other devices.

"Practice of behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

"Practice of chiropractic" means the adjustment of the 24 movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.

"Practice of genetic counseling" means (i) obtaining and evaluating individual and family medical histories to assess the risk of genetic medical conditions and diseases in a patient, his offspring, and other family members; (ii) discussing the features, history, diagnosis, environmental factors, and risk management of genetic medical conditions and diseases; (iii) ordering genetic laboratory tests and other diagnostic studies necessary for genetic assessment; (iv) integrating the results with personal and family medical history to assess and communicate risk factors for genetic medical conditions and diseases; (v) evaluating the patient's and family's responses to the medical condition or risk of recurrence and providing client-centered counseling and anticipatory guidance; (vi) identifying and utilizing community resources that provide medical, educational, financial,

and psychosocial support and advocacy; and (vii) providing written documentation of medical, genetic, and counseling information for families and health care professionals.

"Practice of medicine or osteopathic medicine" means the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method.

"Practice of occupational therapy" means the therapeutic use of occupations for habilitation and rehabilitation to enhance physical health, mental health, and cognitive functioning and includes the evaluation, analysis, assessment, and delivery of education and training in basic and instrumental activities of daily living; the design, fabrication, and application of orthoses (splints); the design, selection, and use of adaptive equipment and assistive technologies; therapeutic activities to enhance functional performance; vocational evaluation and training; and consultation concerning the adaptation of physical, sensory, and social environments.

"Practice of podiatry" means the prevention, diagnosis, treatment, and cure or alleviation of physical conditions, diseases, pain, or infirmities of the human foot and ankle, including the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation of the foot proximal to the transmetatarsal level through the metatarsal shafts. Amputations proximal to the metatarsal-phalangeal joints may only be performed in a hospital or ambulatory surgery facility accredited by an organization listed in § 54.1-2939. The practice includes the diagnosis and treatment of lower extremity ulcers; however, the treatment of severe lower extremity ulcers proximal to the foot and ankle may only be performed by appropriately trained, credentialed podiatrists in an approved hospital or ambulatory surgery center at which the podiatrist has privileges, as described in § 54.1-2939. The Board of Medicine shall determine whether a specific type of treatment of the foot and ankle is within the scope of practice of podiatry.

"Practice of radiologic technology" means the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.

"Practice of respiratory care" means the (i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a practitioner of medicine or osteopathic medicine; (ii) transcription and implementation of the written or verbal orders of a practitioner of medicine or osteopathic medicine pertaining to the practice of respiratory care; (iii) observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general physical response exhibit abnormal characteristics; and (iv) implementation of respiratory care procedures, based on observed abnormalities, or appropriate reporting, referral, respiratory care protocols or changes in treatment pursuant to the written or verbal orders by a licensed practitioner of medicine or osteopathic

medicine or the initiation of emergency procedures, pursuant to the Board's regulations or as otherwise authorized by law. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate by the Board in accordance with the written or verbal order of a practitioner of medicine or osteopathic medicine, and shall be performed under qualified medical direction.

"Qualified medical direction" means, in the context of the practice of respiratory care, having readily accessible to the respiratory therapist a licensed practitioner of medicine or osteopathic medicine who has specialty training or experience in the management of acute and chronic respiratory disorders and who is responsible for the quality, safety, and appropriateness of the respiratory services provided by the respiratory therapist.

"Radiologic technologist" means an individual, other than a licensed doctor of medicine, osteopathy, podiatry, or chiropractic or a dentist licensed pursuant to Chapter 27 (§ 54.1-2700 et seq.), who (i) performs, may be called upon to perform, or is licensed to perform a comprehensive scope of diagnostic or therapeutic radiologic procedures employing ionizing radiation and (ii) is delegated or exercises responsibility for the operation of radiation-generating equipment, the shielding of patient and staff from unnecessary radiation, the appropriate exposure of radiographs, the administration of radioactive chemical compounds under the direction of an authorized user as specified by regulations of the Department of Health, or other procedures that contribute to any significant extent to the site or dosage of ionizing radiation to which a patient is exposed.

"Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist, dental hygienist, or person who is otherwise authorized by the Board of Dentistry under Chapter 27 (§ 54.1-2700 et seq.) and the regulations pursuant thereto, who performs diagnostic radiographic procedures employing equipment that emits ionizing radiation that is limited to specific areas of the human body.

"Radiologist assistant" means an individual who has met the requirements of the Board for licensure as an advanced-level radiologic technologist and who, under the direct supervision of a licensed doctor of medicine or osteopathy specializing in the field of radiology, is authorized to (i) assess and evaluate the physiological and psychological responsiveness of patients undergoing radiologic procedures; (ii) evaluate image quality, make initial observations, and communicate observations to the supervising radiologist; (iii) administer contrast media or other medications prescribed by the supervising radiologist; and (iv) perform, or assist the supervising radiologist to perform, any other procedure consistent with the guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the American Registry of Radiologic Technologists.

"Respiratory care" means the practice of the allied health profession responsible for the direct and indirect services, including inhalation therapy and respiratory therapy, in the treatment, man-

agement, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under qualified medical direction.

Code 1950, § 54-273; 1950, p. 110; 1958, c. 161; 1960, c. 268; 1966, c. 657; 1970, c. 69; 1973, c. 529; 1975, cc. 508, 512; 1977, c. 127; 1980, c. 157; 1986, c. 439; 1987, cc. 522, 543; 1988, cc. 737, 765; 1991, c. 643; 1994, c. 803; 1995, c. 777; 1996, cc. 152, 158, 470, 937, 980; 1998, cc. 319, 557, 593; 1999, cc. 639, 682, 747, 779; 2000, cc. 688, 814; 2001, c. 533; 2004, c. 731; 2007, c. 861; 2008, cc. 64, 89; 2009, cc. 83, 507; 2010, cc. 715, 725; 2011, cc. 121, 187; 2012, cc. 3, 110, 168, 213, 399; 2014, cc. 10, 266; 2015, c. 302; 2016, c. 93.

§ 54.1-2901. Exceptions and exemptions generally

A. The provisions of this chapter shall not prevent or prohibit:

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

2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice in accordance with regulations promulgated by the Board;

3. Any licensed nurse practitioner from rendering care in collaboration and consultation with a patient care team physician as part of a patient care team pursuant to § 54.1-2957 or any nurse practitioner licensed by the Boards of Nursing and Medicine in the category of certified nurse midwife practicing pursuant to subsection H of § 54.1-2957 when such services are authorized by regulations promulgated jointly by the Board of Medicine and the Board of Nursing;

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

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

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

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

8. The domestic administration of family remedies;

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

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

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

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

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

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

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

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

17. The performance of the duties of any active duty health care provider in active service in the army, navy, coast guard, marine corps, air force, or public health service of the United States at any public or private health care facility while such individual is so commissioned or serving and in accordance with his official military duties;

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

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

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

21. Qualified emergency medical services personnel, when acting within the scope of their certification, and licensed health care practitioners, when acting within their scope of practice, from following Durable Do Not Resuscitate Orders issued in accordance with § 54.1-2987.1 and Board of Health regulations, or licensed health care practitioners from following any other written order of a physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

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

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

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

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

26. Any employee of a school board, authorized by a prescriber and trained in the administration of insulin and glucagon, when, upon the authorization of a prescriber and the written request of the parents as defined in § 22.1-1, assisting with the administration of insulin or administrating glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia;

27. Any practitioner of the healing arts or other profession regulated by the Board from rendering free health care to an underserved population of Virginia who (i) does not regularly practice his profession in Virginia, (ii) holds a current valid license or certificate to practice his profession in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of the Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of the license or certification issued in such other

jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any practitioner of the healing arts whose license or certificate has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow a practitioner of the healing arts who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state;

28. Any registered nurse, acting as an agent of the Department of Health, from obtaining specimens of sputum or other bodily fluid from persons in whom the diagnosis of active tuberculosis disease, as defined in § 32.1-49.1, is suspected and submitting orders for testing of such specimens to the Division of Consolidated Laboratories or other public health laboratories, designated by the State Health Commissioner, for the purpose of determining the presence or absence of tubercle bacilli as defined in § 32.1-49.1;

29. Any physician of medicine or osteopathy or nurse practitioner from delegating to a registered nurse under his supervision the screening and testing of children for elevated blood-lead levels when such testing is conducted (i) in accordance with a written protocol between the physician or nurse practitioner and the registered nurse and (ii) in compliance with the Board of Health's regulations promulgated pursuant to §§ 32.1-46.1 and 32.1-46.2. Any follow-up testing or treatment shall be conducted at the direction of a physician or nurse practitioner;

30. Any practitioner of one of the professions regulated by the Board of Medicine who is in good standing with the applicable regulatory agency in another state or Canada from engaging in the practice of that profession when the practitioner is in Virginia temporarily with an out-of-state athletic team or athlete for the duration of the athletic tournament, game, or event in which the team or athlete is competing;

31. Any person from performing state or federally funded health care tasks directed by the consumer, which are typically self-performed, for an individual who lives in a private residence and who, by reason of disability, is unable to perform such tasks but who is capable of directing the appropriate performance of such tasks; or

32. Any practitioner of one of the professions regulated by the Board of Medicine who is in good standing with the applicable regulatory agency in another state from engaging in the practice of that profession in Virginia with a patient who is being transported to or from a Virginia hospital for care.

B. Notwithstanding any provision of law or regulation to the contrary, military medical personnel, as defined in § 2.2-2001.4, while participating in a pilot program established by the Department of Veterans Services pursuant to § 2.2-2001.4, may practice under the supervision of a licensed physician or podiatrist.

Code 1950, §§ 54-273, 54-274, 54-276 through 54-276.6; 1950, pp. 98, 110; 1954, c. 556; 1958, c. 161; 1960, c. 268; 1962, cc. 127, 394; 164, c. 317; 1966, c. 657; 1970, c. 69; 1973, cc. 105, 514, 529; 1975, cc. 508, 512; 1976, c. 15; 1977, c. 127; 1980, c. 157; 1981, c. 300; 1982, c. 220; 1985, cc. 303, 347, 372; 1986, cc. 377, 439; 1987, cc. 522, 543; 1988, c. 765; 1992, cc. 412, 414; 1994, c. 787; 1995, cc. 509, 777; 1996, cc. 775, 779, 937, 980; 1998, cc. 630, 803, 854; 1999, cc. 570, 814; 2000, cc. 688, 814; 2001, cc. 235, 237, 533; 2002, c. 740; 2003, cc. 514, 519, 641; 2005, cc. 113, 926; 2006, c. 750; 2008, c. 674; 2010, c. 245; 2011, cc. 632, 811; 2012, c. 213; 2014, c. 8; 2016, cc. 74, 212, 418, 494, 495.

§ 54.1-2902. Unlawful to practice without license

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

Code 1950, § 54-274; 1950, p. 98; 1958, c. 161; 1962, c. 127; 1966, c. 657; 1970, c. 69; 1973, cc. 105, 514, 529; 1975, c. 508; 1976, c. 15; 1980, c. 157; 1982, c. 220; 1985, cc. 303, 347; 1986, c. 377; 1988, c. 765; 1996, cc. 937, 980; 2000, c. 688.

§ 54.1-2903. What constitutes practice

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

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

Code 1950, § 54-275; 1958, c. 161; 1966, c. 657; 1973, c. 529; 1975, c. 508; 1988, c. 765; 1991, c. 102; 1996, cc. 937, 980; 2000, c. 688.

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

A. Every license granted under the provisions of this chapter shall be renewed biennially as prescribed by the Board. The Board shall send notice for renewal of a license to every licensee. Failure to receive such notice shall not excuse any licensee from the requirements of renewal. The person receiving such notice shall furnish the information requested and submit the prescribed renewal fee to the Board. Copies of licenses may be obtained as provided in the Board's regulations.

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

C. Any person practicing during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties for violation of this chapter.

Code 1950, § 54-315.1; 1958, c. 161; 1962, c. 128; 1966, c. 657; 1968, c. 674; 1970, c. 69; 1975, c. 508; 1980, c. 157; 1982, c. 606; 1985, c. 303; 1988, c. 765; 1996, cc. 937, 980; 2000, c. 688; 2013, c. 144.

§ 54.1-2905. Repealed

Repealed by Acts 2013, c. 144, cl. 2.

§§ 54.1-2906, 54.1-2907. Repealed

Repealed by Acts 2004, c. 64.

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

A. The president of the Medical Society of Virginia, the Osteopathic Medical Association, the Virginia Chiropractors Association, Inc., and the Virginia Podiatric Medical Association shall report within 30 days to the Board of Medicine any disciplinary action taken by his organization against any member of his organization licensed under this chapter if such disciplinary action is a result of conduct involving intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

B. The president of any association, society, academy or organization shall report within 30 days to the Board of Medicine any disciplinary action taken against any of its members licensed under this chapter if such disciplinary action is a result of conduct involving intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

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

names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of all individuals from whom the association, society, academy, or organization sought information to substantiate the facts required to be reported. All relevant medical records maintained by the reporting entity shall be attached to the report if patient care or the health professional's health status is at issue. The reporting association, society, academy or organization shall also provide notice to the Board that it has submitted any required report to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101 et seq.

The reporting association, society, academy or organization shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

D. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

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

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

G. Any person who fails to make a report to the Board as required by this section shall be subject to a civil penalty not to exceed $5,000. Any person assessed a civil penalty pursuant to this section shall not receive a license, registration or certification or renewal of such from any health regulatory board unless such penalty has been paid.

1977, c. 639, § 54-317.4; 1978, c. 541; 1983, c. 40; 1986, c. 434; 1988, c. 765; 1996, cc. 937, 980; 2000, c. 688; 2003, cc. 753, 762.

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

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

1. Any disciplinary action taken against a person licensed under this chapter in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation;

2. Any malpractice judgment against a person licensed under this chapter;

3. Any settlement of a malpractice claim against a person licensed under this chapter; and

4. Any evidence that indicates a reasonable probability that a person licensed under this chapter is or may be professionally incompetent; has engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients; has engaged in unprofessional conduct; or may be mentally or physically unable to engage safely in the practice of his profession.

The reporting requirements set forth in this section shall be met if these matters are reported to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101 et seq., and notice that such a report has been submitted is provided to the Board.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement, judgment or evidence for which reporting is required pursuant to this section;

2. Any other person licensed under this chapter, except as provided in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

4. All health care institutions licensed by the Commonwealth;

5. The malpractice insurance carrier of any person who is the subject of a judgment or settlement; and

6. Any health maintenance organization licensed by the Commonwealth.

C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

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

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

F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any person known by such clerk to be licensed under this chapter of any

(i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.

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

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

1986, c. 434, § 54-317.4:1; 1988, c. 765; 1998, c. 744; 2003, cc. 753, 762.

§ 54.1-2910. Repealed

Repealed by Acts 1997, c. 698.

§ 54.1-2910.01. Practitioner information provided to patients

Upon request by a patient, doctors of medicine, osteopathy, and podiatry shall inform the patient about the following:

1. Procedures to access information on the doctor compiled by the Board of Medicine pursuant to § 54.1-2910.1; and

2. If the patient is not covered by a health insurance plan that the doctor accepts or a managed care health insurance plan in which the doctor participates, the patient may be subject to the doctor's full charge which may be greater than the health plan's allowable charge.

2005, c. 468.

§ 54.1-2910.1. Certain data required

A. The Board of Medicine shall require all doctors of medicine, osteopathy and podiatry to report and shall make available the following information:

1. The names of the schools of medicine, osteopathy, or podiatry and the years of graduation;

2. Any graduate medical, osteopathic, or podiatric education at any institution approved by the Accreditation Council for Graduation Medical Education, the American Osteopathic Association or the Council on Podiatric Medical Education;

3. Any specialty board certification as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of the American Osteopathic Association, the American Board of Multiple Specialties in Podiatry, or the Council on Podiatric Medical Education of the American Podiatric Medical Association;

4. The number of years in active, clinical practice as specified by regulations of the Board;

5. Any hospital affiliations;

6. Any appointments, within the most recent 10-year period, of the doctor to the faculty of a school of medicine, osteopathy or podiatry and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;

7. The location and telephone number of any primary and secondary practice settings and the approximate percentage of the doctor's time spent practicing in each setting. For the sole purpose of expedited dissemination of information about a public health emergency, the doctor shall also provide to the Board any e-mail address or facsimile number; however, such e-mail address or facsimile number shall not be published on the profile database and shall not be released or made available for any other purpose;

8. The access to any translating service provided to the primary and secondary practice settings of the doctor;

9. The status of the doctor's participation in the Virginia Medicaid Program;

10. Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ 54.1-2400.6, 54.1-2908, and 54.1-2909 that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action;

11. Conviction of any felony; and

12. Other information related to the competency of doctors of medicine, osteopathy, and podiatry, as specified in the regulations of the Board.

B. In addition, the Board shall provide for voluntary reporting of insurance plans accepted and managed care plans in which the doctor participates.

C. The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a specific doctor. The Board's regulations shall provide for reports to include all medical malpractice judgments and medical malpractice settlements of more than $10,000 within the most recent 10-year period in categories indicating the level of significance of each award or settlement; however, the specific numeric values of reported paid claims shall not be released in any individually identifiable manner under any circumstances. Notwithstanding this subsection, a licensee shall report a medical malpractice judgment or medical malpractice settlement of less than $10,000 if any other medical malpractice judgment or medical malpractice settlement has been paid by or for the licensee within the preceding 12 months.

D. This section shall not apply to any person licensed pursuant to §§ 54.1-2928.1, 54.1-2933.1, 54.1-2936, and 54.1-2937 or to any person holding an inactive license to practice medicine, osteopathy, or podiatry.

1998, c. 744; 1999, c. 573; 2000, c. 199; 2001, c. 199; 2001, Sp. Sess. I, c. 5; 2002, c. 38; 2004, cc. 64, 703; 2007, c. 861; 2008, c. 479.

§ 54.1-2910.2. Posting of disciplinary information

The Board shall post on any department website available to the public all final orders, together with any associated notices, which imposed disciplinary action against licensees of the Board. The Board shall not post notices that have not been adjudicated. Notices and orders entered prior to July 1, 2007, that did not result in disciplinary action by the Board may be removed upon written request of the licensee. Nothing in this section shall be construed to prohibit the inspection and copying of records of disciplinary actions to the extent permitted under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and § 54.1-2400.2.

2007, c. 861.

§ 54.1-2910.3. No requirement to participate in third-party reimbursement programs

No provider licensed pursuant to this chapter shall be required to participate in any public or private third-party reimbursement program as a condition of licensure.

2011, c. 490.

Article 2 - BOARD OF MEDICINE

§ 54.1-2911. Board; membership; terms of office; change of residence; executive director; etc

The Board of Medicine shall consist of one medical physician from each congressional district, one osteopathic physician, one podiatrist, one chiropractor, and four citizen members. No two citizen members shall reside in the same congressional district. Citizen members shall have all voting and participation rights of other members. The term of office of the members of the Board shall be four years. If any medical physician member of the Board ceases to reside in the district from which he was appointed, except by reason of redistricting, his office shall be deemed vacant.

The officers of the Board shall be a president, vice-president and a secretary, who shall also act as treasurer, who shall be members of and selected by the Board.

Regular meetings of the Board shall be held at such times and places as prescribed by the Board. Special meetings may be held upon the call of the president and any 11 members. Twelve members of the Board shall constitute a quorum.

The Board may establish an executive committee composed of the president, vice-president, the secretary and five other members of the Board appointed by the president. The executive committee shall include at least two citizen members. In the absence of the Board, the executive committee shall have full powers to take any action and conduct any business authorized by this chapter. Five members of the executive committee shall constitute a quorum. Any actions or business conducted by the executive committee shall be acted upon by the full Board as soon as practicable.

There shall be an executive director for the Board of Medicine who shall be licensed or eligible for licensure in the Commonwealth as a physician.

Code 1950, §§ 54-282, 54-283, 54-287, 54-289, 54-290; 1950, p. 111; 1966, cc. 166, 657; 1970, c. 69; 1973, c. 401; 1973, c. 529, § 54-290.1; 1975, c. 508; 1986, c. 434, § 54-290.2; 1986, c. 464; 1988, cc. 42, 765; 2001, cc. 186, 198; 2003, cc. 753, 762.

§ 54.1-2912. Nominations

Nominations may be made for the medical physicians from a list of three names submitted to the Governor by the Medical Society of Virginia and the osteopathic physician, podiatrist and chiropractor members, respectively, from a list of at least three names submitted by June 1 of each year by their respective state societies. In no case shall the Governor be bound to make any appointment from among the nominees of the respective societies. The Governor may notify the society, which may make nominations, of any professional vacancy other than by expiration among the members of the Board representing the particular profession and like nominations may be made for the filling of the vacancy.

Code 1950, § 54-284; 1950, p. 111; 1966, c. 657; 1970, c. 69; 1975, c. 508; 1986, c. 434; 1988, c. 765; 2005, c. 163.

§ 54.1-2912.1. (Effective until July 1, 2022) Continued competency and office-based anesthesia requirements

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence, which may include continuing education, testing, or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

C. The Board shall require prescribers identified by the Director of the Department of Health Professions pursuant to subdivision C 10 of § 54.1-2523 to complete two hours of continuing education in each biennium on topics related to pain management, the responsible prescribing of covered substances as defined in § 54.1-2519, and the diagnosis and management of addiction. Prescribers required to complete continuing education pursuant to this subsection shall be notified of such requirement no later than January 1 of each odd-numbered year.

D. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

E. Pursuant to § 54.1-2400 and its authority to establish the qualifications for registration, certification, or licensure that are necessary to ensure competence and integrity to engage in the regulated practice, the Board shall promulgate regulations governing the practice of medicine related to the administration of anesthesia in physicians' offices.

1997, c. 227; 2002, c. 324; 2016, c. 447.

§ 54.1-2912.1. (Effective July 1, 2022) Continued competency and office-based anesthesia requirements

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

D. Pursuant to § 54.1-2400 and its authority to establish the qualifications for registration, certification or licensure that are necessary to ensure competence and integrity to engage in the regulated practice, the Board of Medicine shall promulgate regulations governing the practice of medicine related to the administration of anesthesia in physicians' offices.

1997, c. 227; 2002, c. 324.

§ 54.1-2912.2. Board may endorse certain document

In the furtherance of its responsibility to ensure continued practitioner competency, the Board of Medicine may endorse the Medical Society of Virginia's Guidelines for the Use of Opioids in the Management of Chronic, Non-Cancer Pain, developed and adopted in 1997.

For the purpose of this section, "endorse" means to publicize and distribute such guidelines as providing an appropriate standard of care; however, the Board's endorsement shall not be construed to mean that the guidelines must be followed or are regulations or are in any way intended to be enforceable law.

1998, c. 496.

§ 54.1-2912.3. Competency assessments of certain practitioners

The Board shall require an assessment of the competency of any person holding an active license under this chapter on whose behalf three separate medical malpractice judgments or medical malpractice settlements of more than $75,000 each are paid within the most recent 10-year period. The assessment shall be accomplished in 18 months or less by a program acceptable to the Board. The licensee shall bear all costs of the assessment. The results of the assessment shall be reviewed by the Board and the Board shall determine a plan of corrective action or appropriate resolution pursuant to the assessment. The assessment, related documents and the processes shall be governed by the confidentiality provisions of § 54.1-2400.2 and shall not be admissible into evidence

in any medical malpractice action involving the licensee. The Board shall annually post the number of competency assessments undertaken on its website.

2005, cc. 649, 692; 2007, c. 861; 2011, c. 808.

§ 54.1-2912.4. Board to post autism information

The Board of Medicine shall post information about autism spectrum disorder developed by the Board together with the Department of Behavioral Health and Developmental Services and other stakeholders, including information about diagnosis of autism spectrum disorder in adults and children, the role of health care providers in identifying and diagnosing autism spectrum disorder in adults and children, services available to adults and children with autism spectrum disorder in the Commonwealth, processes and procedures for linking adults and children with autism spectrum disorder with state and local services for individuals with autism, and other sources of information on topics related to the identification, diagnosis, and treatment of autism spectrum disorder in adults and children on a website maintained by the Board, and shall notify licensees regarding the availability of such information.

2015, c. 363.

§ 54.1-2913. Repealed

Repealed by Acts 2013, c. 144, cl. 2.

§ 54.1-2913.1. Acceptance of other examinations

The Board shall promulgate regulations governing examinations for each branch of the healing arts. In lieu of any or all parts of the examinations prescribed by the Board for a license to practice medicine, osteopathy, podiatry or chiropractic, the Board may:

1. Accept a certificate issued by either the National Board for the appropriate branch of the healing arts or a state board prior to 1970 attesting the satisfactory completion of an examination given by that board if, in the opinion of the Board, the substituted examination material is substantially equivalent to the material for which it is substituted, and the passing grades are in each instance the equivalent of the grades required to be made on the corresponding examinations administered by the Board.

2. Accept a certificate issued by a state board during or after 1970 attesting to the applicant's satisfactory completion of all requirements to practice medicine, osteopathy, podiatry or chiropractic in that state, if the applicant has a current and unrestricted license to practice in another state and a current specialty certificate acceptable to the Board.

1989, c. 45; 2013, c. 144.

§ 54.1-2914. Sale of controlled substances and medical devices or appliances; requirements for vision care services

A. A practitioner of the healing arts shall not engage in selling controlled substances unless he is licensed to do so by the Board of Pharmacy. However, this prohibition shall not apply to a doctor

of medicine, osteopathy or podiatry who administers controlled substances to his patients or provides controlled substances to his patient in a bona fide medical emergency or when pharmaceutical services are not available. Practitioners who sell or dispense controlled substances shall be subject to inspection by the Department of Health Professions to ensure compliance with Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of this title and the Board of Pharmacy's regulations. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

B. A practitioner of the healing arts who may lawfully sell medical appliances or devices shall not sell such appliances or devices to persons who are not his own patients and shall not sell such articles to his own patients either for his own convenience or for the purpose of supplementing his income. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

C. A practitioner of the healing arts may, from within the practitioner's office, engage in selling or promoting the sale of eyeglasses and may dispense contact lenses. Only those practitioners of the healing arts who engage in the examination of eyes and prescribing of eyeglasses may engage in the sale or promotion of eyeglasses. Practitioners shall not employ any unlicensed person to fill prescriptions for eyeglasses within the practitioner's office except as provided in subdivision A 6 of § 54.1-2901. A practitioner may also own, in whole or in part, an optical dispensary located adjacent to or at a distance from his office.

D. Any practitioner of the healing arts engaging in the examination of eyes and prescribing of eyeglasses shall give the patient a copy of any prescription for eyeglasses and inform the patient of his right to have the prescription filled at the establishment of his choice. No practitioner who owns, in whole or in part, an establishment dispensing eyeglasses shall make any statement or take any action, directly or indirectly, that infringes on the patient's right to have a prescription filled at an establishment other than the one in which the practitioner has an ownership interest.

Disclosure of ownership interest by a practitioner as required by § 54.1-2964 or participation by the practitioner in contractual arrangements with third-party payors or purchasers of vision care services shall not constitute a violation of this subsection.

Code 1950, § 54-317; 1954, c. 627; 1958, c. 161; 1966, cc. 166, 657; 1968, c. 582; 1970, c. 69; 1973, c. 529; 1975, c. 508; 1978, c. 622; 1979, c. 727; 1980, c. 157; 1985, c. 96; 1986, c. 86; 1988, cc. 765, 904; 1989, c. 510; 1994, c. 70; 1998, c. 580; 2001, cc. 268, 858; 2005, c. 163; 2016, c. 495.

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

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

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

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

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

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

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

6. Undertaking in any manner or by any means whatsoever to procure or perform or aid or abet in procuring or performing a criminal abortion;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The commission or conviction of an offense in another state, territory, or country, which if committed in Virginia would be a felony, shall be treated as a felony conviction or commission under this section regardless of its designation in the other state, territory, or country.

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

Code 1950, §§ 54-316, 54-317; 1954, c. 627; 1958, cc. 161, 461; 1966, cc. 166, 657; 1968, c. 582; 1970, c. 69; 1973, c. 529; 1975, c. 508; 1978, c. 622; 1979, c. 727; 1980, c. 157; 1985, c. 96; 1986, cc. 86, 434; 1988, c. 765; 1993, c. 991; 1997, c. 801; 2003, cc. 753, 762; 2004, c. 64; 2005, c. 163; 2013, c. 144.

§ 54.1-2916. Repealed

Repealed by Acts 2005, c. 163, cl. 2.

§ 54.1-2917. Repealed

Repealed by Acts 2013, c. 144, cl. 2.

§ 54.1-2918. Suspension or revocation for violation of facility licensing laws

Whenever the Board of Health has suspended or revoked any license granted under the provisions of Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 and such suspension or revocation resulted from a violation of any provision of this chapter, or because of illegal practice, or conduct or practices detrimental to the welfare of any patient or resident in such hospital, a report of such action shall be made by the Board of Health to the Board of Medicine.

If it appears from the report, or from other evidence produced before the Board of Medicine, that the legally responsible head of such hospital is a practitioner of any branch of the healing arts, the Board may suspend or revoke the certificate or license of such person, or prosecute such person if

unlicensed. The Board may suspend or revoke the certificate or license of or prosecute for unlicensed practice any person subject to this chapter who is practicing in or employed by such hospital if such practitioner or employee is guilty of, responsible for, or implicated in illegal practices for which the hospital license has been suspended or revoked.

Code 1950, § 54-321.1; 1975, c. 508; 1979, c. 720; 1988, c. 765.

§ 54.1-2919. Repealed

Repealed by Acts 2004, c. 64.

§ 54.1-2920. Notice and opportunity to be heard required before suspension or revocation of license; allegations to be in writing; practice pending appeal; notice to patients

Except as provided in § 54.1-2408.1, the Board shall take no action to revoke or suspend the license of any of its licensees except after reasonable notice and an opportunity to be heard in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Such action may be in addition to any penalty imposed by law for the violation. For the purposes of this section, reasonable notice means written notice mailed at least thirty days prior to the scheduled hearing.

Any practitioner whose license is suspended or revoked by the Board shall not engage in the practice of any of the healing arts in the Commonwealth pending his appeal.

Whenever any license suspension or revocation becomes final, the practitioner shall forthwith give notice of that action, by certified mail, to all patients to whom he is currently providing services. Such practitioner shall cooperate with other practitioners to ensure continuation of treatment in conformity with the wishes of the patient. Such practitioner shall also notify any hospitals or other facilities where he is currently granted privileges, and any health insurance companies, health insurance administrators or health maintenance organizations currently reimbursing him for any of the healing arts.

1973, c. 529, § 54-318.3; 1984, c. 81; 1985, c. 403; 1986, c. 434; 1988, c. 765; 1996, c. 530; 1997, c. 556.

§ 54.1-2921. Repealed

Repealed by Acts 2003, cc. 753 and 762.

§§ 54.1-2922, 54.1-2923. Repealed

Repealed by Acts 2004, cc. 40 and 68.

§ 54.1-2923.1. Programs for impaired practitioners

A. The Board may implement an impaired practitioners program for persons regulated under this chapter. For this purpose, the Board may enter into contracts with a nonprofit corporation or professional organization which may include, but need not be limited to, the following components:

1. A requirement that the contractor enter into contracts with providers of treatment;

2. Evaluation of reports of suspected impairment;

3. Intervention in cases of verified impairment;

4. Referrals of impaired practitioners to treatment programs;

5. Monitoring of the treatment and rehabilitation of impaired practitioners, including any practitioners ordered to enter the program by the Board;

6. Post-treatment monitoring and support of rehabilitated impaired practitioners;

7. Performance of such other activities as may be agreed upon by the Board; and

8. Provision of prevention and education services.

B. Any contract executed pursuant to subsection A shall be financed by a surcharge on each license or certificate issued under this chapter. Such funds shall be used solely for the implementation of the impaired practitioners program.

1997, c. 469.

§ 54.1-2924. Repealed
Repealed by Acts 2013, c. 144, cl. 2.

§ 54.1-2924.1. Expired
Expired.

§ 54.1-2925. Use of experts in disciplinary proceedings
In any disciplinary proceeding conducted pursuant to this chapter, the executive director may contract with an expert or a panel of experts in the various specialties to provide assistance in investigating and evaluating practitioners who may be subject to punitive action. The executive director may select experts for this purpose from lists of specialists to be provided and regularly updated by the appropriate professional societies. Any contract between the executive director and any consulting expert shall provide that the consulting expert shall: (i) be available to work with an investigator from the beginning of the investigation; (ii) receive appropriate compensation for his services; (iii) review and evaluate a completed investigation report in accordance with guidelines established by the Board and the Office of the Attorney General and return it to the Board for action within a specified period of time; and (iv) be available to testify for the Board in any administrative or court proceeding arising from the investigations in which he has participated.

Any expert assisting in any investigation voluntarily or under the contract arrangements described in this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless he acted in bad faith or with malicious intent.

1986, c. 434, § 54-318.4; 1988, c. 765; 1996, c. 519.

§ 54.1-2926. Powers of Board with respect to practitioners licensed to practice pharmacy
The Board of Medicine shall have, with respect to practitioners of medicine, homeopathy, osteopathy, or podiatry, the same powers conferred upon the Board of Pharmacy with respect to pharmacists, to revoke or suspend the license to dispense drugs issued under § 54.1-3304 or § 54.1-3304.1 or to prescribe the medicines to be possessed or dispensed by such practitioner. The Board

of Medicine shall promptly report any such action taken to the Board of Pharmacy, and the revoked license shall not be reissued nor shall the person be licensed anew, except upon recommendation of the Board of Medicine.

1972, c. 798, § 54-318.2; 1978, c. 465; 1988, c. 765; 1996, cc. 468, 496.

§ 54.1-2927. Applicants from other states without reciprocity; temporary licenses or certificates for certain practitioners of the healing arts

A. The Board, in its discretion, may issue certificates or licenses to applicants upon endorsement by boards or other appropriate authorities of other states or territories or the District of Columbia with which reciprocal relations have not been established if the credentials of such applicants are satisfactory and the examinations and passing grades required by such other boards are fully equal to those required by the Virginia Board.

The Board may issue certificates or licenses to applicants holding certificates from the national boards of their respective branches of the healing arts if their credentials, schools of graduation and national board examinations and results are acceptable to the Board. The Board shall promulgate regulations in order to carry out the provisions of this section.

B. The Board may issue authorization to practice valid for a period not to exceed three months to a practitioner of the healing arts licensed or certified and in good standing with the applicable regulatory agency in the state, District of Columbia, or Canada where the practitioner resides when the practitioner is in Virginia temporarily to practice the healing arts (i) in a summer camp or in conjunction with patients who are participating in recreational activities, (ii) in continuing education programs, or (iii) by rendering at any site any health care services within the limits of his license or certificate, voluntarily and without compensation, to any patient of any clinic that is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106. A fee not to exceed $25 may be charged by the Board for the issuance of authorization to practice pursuant to the provisions of this subsection.

Code 1950, §§ 54-276.5, 54-310; 1954, c. 626; 1958, c. 161; 1960, cc. 333, 334; 1970, c. 69; 1972, c. 15; 1973, c. 529; 1975, c. 508; 1981, c. 300; 1985, c. 303; 1988, c. 765; 1992, c. 414; 1993, c. 784; 2016, c. 494.

§ 54.1-2928. Repealed

Repealed by Acts 2013, c. 144, cl. 2.

§ 54.1-2928.1. Restricted volunteer license

A. The Board may issue a restricted volunteer license to a practitioner of the healing arts who:

1. Held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive;

2. Is practicing within the limits of his license in accordance with provisions of § 54.1-106; and

3. Attests to knowledge of the laws and regulations governing his branch of the healing arts in Virginia.

B. A person holding a restricted volunteer license under this section shall not be required to complete continuing education for the first renewal of such a license. Subsequent renewals will require continuing education as specified by Board regulation.

C. If a practitioner with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past four years, he shall only practice his profession if a doctor of medicine or osteopathic medicine with an active, unrestricted Virginia license reviews the quality of care rendered by the practitioner with the restricted volunteer license at least every 90 days.

D. Such license may be renewed every two years in accordance with regulations promulgated by the Board.

E. A practitioner holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all such practitioners in Virginia.

F. The application fee and the biennial renewal fee for restricted volunteer license under this section shall be no more than one-half the renewal fee for an inactive license in the same branch of the healing arts.

2006, c. 881.

Article 3 - LICENSURE OF PHYSICIANS OF MEDICINE AND OSTEOPATHIC MEDICINE, CHIROPRACTORS, AND PODIATRISTS

§ 54.1-2929. Licenses required

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

Code 1950, § 54-281; 1966, c. 657, § 54-281.3; 1970, c. 69; 1988, c. 765; 1996, cc. 937, 980.

§ 54.1-2930. Requirements for licensure

The Board may issue a license to practice medicine, osteopathy, chiropractic, and podiatric medicine to any candidate who has submitted satisfactory evidence verified by affidavits that he:

1. Is 18 years of age or more;

2. Is of good moral character;

3. Has successfully completed all or such part as may be prescribed by the Board, of an educational course of study of that branch of the healing arts in which he desires a license to practice, which

course of study and the educational institution providing that course of study are acceptable to the Board; and

4. Has completed at least 12 months of satisfactory postgraduate training in one program or institution approved by an accrediting agency recognized by the Board for internships or residency training. At the discretion of the Board, the postgraduate training may be waived if an applicant for licensure in podiatry has been in active practice for four continuous years while serving in the military and is a diplomate of the American Board of Podiatric Surgery. Applicants for licensure in chiropractic need not fulfill this requirement.

In determining whether such course of study and institution are acceptable to it, the Board may consider the reputation of the institution and whether it is approved or accredited by regional or national educational or professional associations including, but not limited to, such organizations as the Accreditation Council for Graduate Medical Education, Liaison Committee on Medical Education, Council on Postgraduate Training of the American Osteopathic Association, Council on Osteopathic College Accreditation, College of Family Physicians of Canada, Committee for the Accreditation of Canadian Medical Schools, Education Commission on Foreign Medical Graduates, Royal College of Physicians and Surgeons of Canada, or their appropriate subsidiary agencies; by any appropriate agency of the United States government; or by any other organization approved by the Board. Supervised clinical training that is received in the United States as part of the curriculum of an international medical school shall be obtained in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the relevant clinical training or in a program acceptable to the Board and deemed a substantially equivalent experience. The Board may also consider any other factors that reflect whether that institution and its course of instruction provide training sufficient to prepare practitioners to practice their branch of the healing arts with competency and safety in the Commonwealth.

Code 1950, § 54-305; 1952, c. 211; 1954, c. 626; 1972, c. 824; 1975, c. 508; 1982, c. 605; 1985, c. 605; 1988, cc. 89, 132, 765; 2013, c. 144; 2015, c. 525.

§ 54.1-2931. Examinations; passing grade

A. The examinations of candidates for licensure to practice medicine and osteopathy shall be those of the National Board of Medical Examiners, the Federation of State Medical Boards, the National Board of Osteopathic Medical Examiners, or such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

B. The examination of candidates for licensure to practice chiropractic shall include the National Board of Chiropractic Examiners Examinations and such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

C. The examination of candidates for licensure to practice podiatry shall be the National Board of Podiatric Medical Examiners examinations and such other examinations as determined by the Board. The minimum passing score shall be determined by the Board prior to administration of the examination.

Code 1950, § 54-297; 1958, c. 161; 1966, c. 657; 1970, c. 69; 1973, c. 529; 1978, c. 466; 1982, c. 605; 1985, c. 291; 1988, c. 765; 1990, c. 818; 2013, c. 144.

§ 54.1-2932. Issuance of licenses to practice

Upon completion of an application satisfactory to the Board, applicants shall be granted licenses to practice medicine, osteopathy, chiropractic, or podiatry and each license shall show plainly on its face the school or branch of the healing arts in which the holder thereof is permitted to practice. All licenses shall be attested by the signature of the president and secretary of the Board, respectively.

Code 1950, § 54-309; 1958, cc. 161, 461; 1968, c. 766; 1970, c. 69; 1980, c. 157; 1985, c. 96; 1988, c. 765; 2013, c. 144.

§ 54.1-2933. Repealed

Repealed by Acts 2015, c. 525, cl. 2.

§ 54.1-2933.1. Temporary licensure of certain foreign graduates to obtain training

The Board may issue, to a physician licensed in a foreign country, a nonrenewable license valid for a period not to exceed two years to practice medicine while such physician is attending advanced training in an institute for postgraduate health science operated collaboratively by a health care system having hospitals and health care facilities with residency and training program (s) approved by an accrediting agency recognized by the Board and a public institution of higher education. This temporary license shall only authorize the holder to practice medicine in the hospitals and outpatient clinics of the collaborating health care system while he is receiving training in the institute for postgraduate health science. The Board may promulgate regulations for such license.

1995, c. 230; 2000, c. 788.

§ 54.1-2934. Evidence of right to practice required of certain foreign graduates

Every candidate who is a graduate of a school of a country other than the United States and Canada must, in addition to meeting the other requirements of this article, exhibit to the Board a diploma, license or certificate conferring the full right to practice in that country, or satisfactory evidence showing that the candidate has completed the course of study and passed examinations equivalent to those required for a diploma or license conferring such full right to practice.

1954, c. 626, § 54-306.2; 1988, c. 765.

§ 54.1-2935. Supplemental training or study required of certain graduates

In the event that an applicant has completed an educational course of study in an institution that is not approved by an accrediting agency recognized by the Board, the applicant shall not be licensed until he has completed two years of satisfactory postgraduate training. The two years shall include at least 12 months in one program or institution approved by an accrediting agency recognized by the Board for internship or residency training or in a clinical fellowship, acceptable to the Board, in the same or a related field. The Board may consider other postgraduate training as a substitute for the required postgraduate training if it finds that such training is substantially equivalent to that required by this section.

1954, c. 626, § 54-306.3; 1958, c. 461; 1973, c. 529; 1982, c. 605; 1988, cc. 132, 765; 2003, c. 996; 2013, c. 144; 2015, c. 525.

§ 54.1-2936. Limited licenses to certain graduates of foreign medical schools

A. After receiving a recommendation from the dean of an accredited medical school which was reached after consultation with the chairmen of the departments in the school or college and having become satisfied that the applicant is a person of professorial rank whose knowledge and special training will benefit the medical school or educational programs sponsored by the medical school in affiliated hospitals, the Board may issue a limited license to practice medicine in the hospitals and outpatient clinics of the school or college or in a hospital formally affiliated with the medical school for purposes of undergraduate or postgraduate medical education to a graduate of a foreign medical school as long as he serves as a full-time or adjunct faculty member. This limited license shall be valid for a period of not more than one year, but may be renewed annually by the Board upon recommendation of the dean of the medical school and continued service as a full-time or adjunct faculty member.

B. After receiving a recommendation from the dean of an accredited medical school which was reached after consultation with the chairmen of the departments in the school or college and having become satisfied that the applicant is a person whose attendance will benefit the medical school, the Board may issue a limited license to practice medicine as a fellow if such fellowship is ranked between the residency level and that of associate professor. This limited license shall only authorize the holder to practice medicine in the hospitals and outpatient clinics of the school while he is a full-time fellow. The license shall be valid for a period of not more than one year, but may be renewed upon recommendation of the dean of the medical school and continuation of the fellowship. A limited license to a foreign graduate engaged in a fellowship shall not be renewed more than twice.

1964, c. 285, § 54-311.1; 1970, c. 69; 1975, c. 508; 1977, c. 586, § 54-311.2; 1988, c. 765; 2003, c. 473.

§ 54.1-2937. Temporary licenses to interns and residents in hospitals and other organizations

Upon recommendation by the chief of an approved internship or residency program as defined in this chapter, the Board may issue a temporary annual license to practice medicine, osteopathic

medicine, or podiatry to interns and residents in such programs. No such license shall be issued to an intern or resident who has not completed successfully the preliminary academic education required for admission to examinations given by the Board in his particular field of practice. Such license shall expire upon the holder's withdrawal or termination from the internship or residency program. The Board may prescribe such regulations not in conflict with existing law and require such reports from hospitals or other organizations operating an approved graduate medical education program in the Commonwealth as may be necessary to carry out the provisions of this section.

1986, c. 307, § 54-311.3; 1987, c. 44; 1988, c. 765; 2015, c. 525.

§ 54.1-2938. Repealed

Repealed by Acts 1991, c. 102 .

§ 54.1-2939. Surgery by podiatrists on patients under general anesthesia limited

Podiatrists shall not perform surgery on patients under a general anesthetic except in a hospital or an ambulatory surgery center accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).

1977, c. 127, § 54-275.2; 1988, c. 765; 1999, c. 651; 2013, c. 144.

§ 54.1-2940. Repealed

Repealed by Acts 2001, cc. 186 and 198.

§ 54.1-2941. Contracts of practitioners with approved colleges and certain state agencies not prohibited

This chapter shall not be construed to prohibit, forbid or prevent (i) any approved school of medicine, osteopathy, podiatry or chiropractic from contracting with any licensed practitioner to teach or participate in a preceptorship program in such college on such terms of compensation as may be mutually satisfactory, which contract may prescribe the extent, if any, to which the practitioner may engage in private practice, or (ii) any institution, hospital, treatment center, sanatorium or other similar agency under the management and control of an agency of the Commonwealth from employing or contracting with any licensed practitioner to furnish professional services in the work of the agency, or to persons entitled to receive such care from the agency.

1958, c. 275, § 54-275.1; 1984, c. 710; 1988, c. 765.

Article 4 - LICENSURE AND CERTIFICATION OF OTHER PRACTITIONERS OF THE HEALING ARTS

§§ 54.1-2942 through 54.1-2948. Repealed

Repealed by Acts 2000, c. 688, cl. 2.

§ 54.1-2949. License required

It shall be unlawful for a person to practice or to hold himself out as practicing as a physician assistant or to use in connection with his name the words or letters "Physician Assistant" or "PA" unless he holds a license as such issued by the Board.

1988, c. 765; 2013, c. 144; 2016, c. 450.

§ 54.1-2950. Requisite training and educational achievements of assistants

The Board shall establish a testing program to determine the training and educational achievements of the physician assistant or the Board may accept other evidence, such as experience or completion of an approved training program, in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.

Pending the outcome of the next examination administered by the National Commission for Certification of Physician Assistants, the Board may grant provisional licensure to graduates of physician assistants curricula that are approved by the Accreditation Review Commission on Education for the Physician Assistant. Such provisional licensure shall be granted at the discretion of the Board.

1973, c. 529, § 54-281.7; 1984, c. 46; 1988, c. 765; 1997, c. 806; 2013, c. 144; 2016, c. 450.

§ 54.1-2950.1. Advisory Board on Physician Assistants; membership; qualifications

The Advisory Board on Physician Assistants shall consist of five members to be appointed by the Governor as follows: three members shall be licensed physician assistants who have practiced their professions in Virginia for not less than three years prior to their appointments; one shall be a physician who supervises at least one physician assistant; and one shall be a citizen member appointed from the Commonwealth at-large. Beginning July 1, 2011, the Governor's appointments shall be staggered as follows: two members for a term of one year, one member for a term of two years, and two members for a term of three years. Thereafter, appointments shall be for four-year terms. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two successive terms.

1998, c. 319; 2002, c. 698; 2011, cc. 691, 714.

§ 54.1-2951. Repealed

Repealed by Acts 1998, c. 319.

§ 54.1-2951.1. Requirements for licensure as a physician assistant

A. The Board shall promulgate regulations establishing requirements for licensure as a physician assistant that shall include the following:

1. Successful completion of a physician assistant program or surgical physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

2. Passage of the certifying examination administered by the National Commission on Certification of Physician Assistants; and

3. Documentation that the applicant for licensure has not had his license or certification as a physician assistant suspended or revoked and is not the subject of any disciplinary proceedings in another jurisdiction.

B. Prior to initiating practice with a supervising physician, the physician assistant shall enter into a written or electronic practice agreement with at least one supervising physician or podiatrist.

C. A practice agreement shall include delegated activities pursuant to § 54.1-2952, provisions for the periodic review of patient charts or electronic health records, guidelines for availability and ongoing communications among the parties to the agreement and the patient, periodic joint evaluation of the services delivered, and provisions for appropriate physician input in complex clinical cases, in patient emergencies, and for referrals.

A practice agreement may include provisions for periodic site visits by supervising licensees who supervise and direct assistants who provide services at a location other than where the licensee regularly practices. Such visits shall be in the manner and at the frequency as determined by the supervising physician or podiatrist.

D. Evidence of a practice agreement shall be maintained by the physician assistant and provided to the Board upon request.

1998, c. 319; 2011, c. 390; 2013, c. 144; 2016, c. 450.

§ 54.1-2951.2. Issuance of a license

The Board shall issue the license to the physician assistant to practice under the supervision of a licensed doctor of medicine, osteopathy, or podiatry, in accordance with § 54.1-2951.1.

1998, c. 319.

§ 54.1-2951.3. Restricted volunteer license for certain physician assistants

A. The Board may issue a restricted volunteer license to a physician assistant who meets the qualifications for licensure for physician assistants. The Board may refuse issuance of licensure pursuant to § 54.1-2915.

B. A person holding a restricted volunteer license under this section shall:

1. Only practice in public health or community free clinics approved by the Board;

2. Only treat patients who have no insurance or who are not eligible for financial assistance for medical care; and

3. Not receive remuneration directly or indirectly for practicing as a physician assistant.

C. A physician assistant with a restricted volunteer license issued under this section shall only practice as a physician assistant and perform certain delegated acts which constitute the practice of medicine to the extent and in the manner authorized by the Board if:

1. A physician who supervises physician assistants is available; or

2. The physician supervising any physician assistant periodically reviews the relevant patient records.

D. A restricted volunteer license granted pursuant to this section shall be issued to the physician assistant without charge, shall expire twelve months from the date of issuance, and may be renewed annually in accordance with regulations promulgated by the Board.

E. A physician assistant holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the regulations promulgated under this chapter unless otherwise provided for in this section.

1998, c. 319; 2005, c. 163.

§ 54.1-2952. Supervision of assistants by licensed physician, or podiatrist; services that may be performed by assistants; responsibility of licensee; employment of assistants

A. A physician or a podiatrist licensed under this chapter may supervise physician assistants and delegate certain acts which constitute the practice of medicine to the extent and in the manner authorized by the Board. The physician shall provide continuous supervision as required by this section; however, the requirement for physician supervision of physician assistants shall not be construed as requiring the physical presence of the supervising physician during all times and places of service delivery by physician assistants. Each team of supervising physician and physician assistant shall identify the relevant physician assistant's scope of practice, including the delegation of medical tasks as appropriate to the physician assistant's level of competence, the physician assistant's relationship with and access to the supervising physician, and an evaluation process for the physician assistant's performance.

Physician assistants appointed as medical examiners pursuant to § 32.1-282 shall be under the continuous supervision of a licensed doctor of medicine or osteopathic medicine who has been appointed to serve as a medical examiner pursuant to § 32.1-282.

No licensee shall be allowed to supervise more than six physician assistants at any one time.

Any professional corporation or partnership of any licensee, any hospital and any commercial enterprise having medical facilities for its employees which are supervised by one or more physicians or podiatrists may employ one or more physician assistants in accordance with the provisions of this section.

Activities shall be delegated in a manner consistent with sound medical practice and the protection of the health and safety of the patient. Such activities shall be set forth in a practice supervision agreement between the physician assistant and the supervising physician or podiatrist and may include health care services which are educational, diagnostic, therapeutic, preventive, or include treatment, but shall not include the establishment of a final diagnosis or treatment plan for the patient unless set forth in the practice supervision agreement. Prescribing or dispensing of drugs may be permitted as provided in § 54.1-2952.1. In addition, a licensee is authorized to

delegate and supervise initial and ongoing evaluation and treatment of any patient in a hospital, including its emergency department, when performed under the direction, supervision and control of the supervising licensee. When practicing in a hospital, the physician assistant shall report any acute or significant finding or change in a patient's clinical status to the supervising physician as soon as circumstances require and shall record such finding in appropriate institutional records. The physician assistant shall transfer to a supervising physician the direction of care of a patient in an emergency department who has a life-threatening injury or illness. Prior to the patient's discharge, the services rendered to each patient by a physician assistant in a hospital's emergency department shall be reviewed in accordance with the practice agreement and the policies and procedures of the health care institution. A physician assistant who is employed to practice in an emergency department shall be under the supervision of a physician present within the facility.

Further, unless otherwise prohibited by federal law or by hospital bylaws, rules, or policies, nothing in this section shall prohibit any physician assistant who is not employed by the emergency physician or his professional entity from practicing in a hospital emergency department, within the scope of his practice, while under continuous physician supervision as required by this section, whether or not the supervising physician is physically present in the facility. The supervising physician who authorizes such practice by his physician assistant shall (i) retain exclusive supervisory control of and responsibility for the physician assistant and (ii) be available at all times for consultation with both the physician assistant and the emergency department physician. Prior to the patient's discharge from the emergency department, the physician assistant shall communicate the proposed disposition plan for any patient under his care to both his supervising physician and the emergency department physician. No person shall have control of or supervisory responsibility for any physician assistant who is not employed by the person or the person's business entity.

B. No physician assistant shall perform any delegated acts except at the direction of the licensee and under his supervision and control. No physician assistant practicing in a hospital shall render care to a patient unless the physician responsible for that patient has signed the practice agreement, pursuant to regulations of the Board, to act as supervising physician for that physician assistant. Every licensee, professional corporation or partnership of licensees, hospital or commercial enterprise that employs a physician assistant shall be fully responsible for the acts of the physician assistant in the care and treatment of human beings.

C. Notwithstanding the provisions of § 54.1-2956.8:1, a licensed physician assistant who (i) is working under the supervision of a licensed doctor of medicine or osteopathy specializing in the field of radiology, (ii) has been trained in the proper use of equipment for the purpose of performing radiologic technology procedures consistent with Board regulations, and (iii) has successfully completed the exam administered by the American Registry of Radiologic Technologists for physician assistants for the purpose of performing radiologic technology procedures may use fluoroscopy for guidance of diagnostic and therapeutic procedures.

1973, c. 529, §§ 54-281.4, 54-281.5; 1975, cc. 508, 565; 1985, c. 316; 1988, c. 765; 1992, c. 793; 1996, c. 779; 2000, cc. 467, 497; 2002, c. 387; 2005, c. 662; 2008, c. 281; 2012, c. 81; 2014, c. 89; 2015, c. 107; 2016, c. 450.

§ 54.1-2952.1. Prescription of certain controlled substances and devices by licensed physician assistants

A. In accordance with the provisions of this section and pursuant to the requirements of Chapter 33 (§ 54.1-3300 et seq.), a licensed physician assistant shall have the authority to prescribe controlled substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.), provided that the physician assistant has entered into and is, at the time of writing a prescription, a party to a practice agreement with a licensed physician or podiatrist that provides for the direction and supervision by such licensee of the prescriptive practices of the physician assistant. Such practice agreements shall include the controlled substances the physician assistant is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician or podiatrist providing direction and supervision.

B. It shall be unlawful for the physician assistant to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the practice agreement between the licensee and the assistant.

C. The Board of Medicine, in consultation with the Board of Pharmacy, shall promulgate such regulations governing the prescriptive authority of physician assistants as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

The regulations promulgated pursuant to this section shall include, at a minimum, (i) such requirements as may be necessary to ensure continued physician assistant competency that may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients; and (ii) a requirement that the physician assistant disclose to his patients the name, address, and telephone number of the supervising licensee and that he is a physician assistant. A separate office for the physician assistant shall not be established.

D. This section shall not prohibit a licensed physician assistant from administering controlled substances in compliance with the definition of "administer" in § 54.1-3401 or from receiving and dispensing manufacturers' professional samples of controlled substances in compliance with the provisions of this section.

1992, c. 793; 1997, c. 806; 1999, c. 745; 2001, c. 465; 2003, c. 510; 2007, c. 16; 2016, c. 450.

§ 54.1-2952.2. When physician assistant signature accepted

Whenever any law or regulation requires a signature, certification, stamp, verification, affidavit, or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit, or endorsement by a physician assistant.

2011, c. 468.

§ 54.1-2953. Renewal, revocation, suspension, and refusal

The Board may revoke, suspend, or refuse to renew an approval for any of the following:

1. Any reason stated in this chapter for revocation or suspension of the license of a practitioner;

2. Failure of the supervising licensee to supervise the physician assistant or failure of the employer to provide a licensee to supervise the physician assistant;

3. The physician assistant's engaging in acts beyond the scope of authority as approved by the Board;

4. Negligence or incompetence on the part of the physician assistant or the supervising licensee in his use of the physician assistant;

5. Violating or cooperating with others in violating any provision of this chapter or the regulations of the Board; or

6. A change in the Board's requirements for approval with which the physician assistant or the licensee does not comply.

1973, c. 529, §§ 54-281.8, 54-281.9; 1985, c. 316; 1988, c. 765; 2013, c. 144; 2016, c. 450.

§ 54.1-2954. Respiratory therapist; definition

"Respiratory therapist" means a person who has passed the examination for the entry level practice of respiratory care administered by the National Board for Respiratory Care, Inc., or other examination approved by the Board, who has complied with the regulations pertaining to licensure prescribed by the Board, and who has been issued a license by the Board.

1985, c. 347, § 54-281.10; 1988, c. 765; 1998, c. 557; 2015, c. 302.

§ 54.1-2954.1. Powers of Board concerning respiratory care

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory therapist or who holds himself out to the public as a respiratory therapist or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory therapists. The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as a respiratory therapist during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure as a respiratory therapist. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.

The Board shall establish requirements for the supervised, structured education of respiratory therapists, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.

1990, c. 920; 1998, c. 557; 2011, c. 390; 2015, c. 302.

§ 54.1-2955. Restriction of titles

It is unlawful for any person not holding a current and valid license from the Virginia Board of Medicine to practice as a respiratory therapist or to assume the title "Respiratory Therapist" or to use, in conjunction with his name, the letters "RT."

1985, c. 347, § 54-281.11; 1988, c. 765; 1990, c. 920; 1998, c. 557; 2015, c. 302.

§ 54.1-2956. Advisory Board on Respiratory Care; appointment; terms; duties; etc

A. The Advisory Board on Respiratory Care shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed respiratory therapists.

The Advisory Board shall consist of five members appointed by the Governor as follows: three members shall be at the time of appointment respiratory therapists who have practiced for not less than three years, one member shall be a physician licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large. Beginning July 1, 2011, the Governor's appointments shall be staggered as follows: two members for a term of one year, one member for a term of two years, and two members for a term of three years. Thereafter, appointments shall be for four-year terms.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.

B. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a respiratory therapist and the standards of professional conduct for holders of licenses.

The Advisory Board shall also assist in such other matters dealing with respiratory care as the Board may in its discretion direct.

1985, c. 347, §§ 54-281.12, 54-281.13; 1988, c. 765; 1990, c. 920; 1998, c. 557; 2011, cc. 691, 714; 2015, c. 302.

§ 54.1-2956.01. Exceptions to respiratory therapist's licensure

The licensure requirements for respiratory therapists provided in this chapter shall not prohibit the practice of respiratory care as an integral part of a program of study by students enrolled in an accredited respiratory care education program approved by the Board. Any student enrolled in accredited respiratory care education programs shall be identified as "Student RT" and shall only deliver respiratory care under the direct supervision of an appropriate clinical instructor recognized by the education program.

1998, c. 557; 2015, c. 302.

§ 54.1-2956.1. Powers of Board concerning occupational therapy

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who practices occupational therapy or claims to be an occupational therapist or occupational therapy assistant or who holds himself out to the public as an occupational therapist or occupational therapy assistant or who engages in the practice of occupational therapy, and to that end it may license practitioners as occupational therapists or occupational therapy assistants who have met the qualifications established in regulation by the Board.

The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as an occupational therapist during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure as an occupational therapist.

1989, c. 306; 1998, c. 593; 2000, c. 782; 2004, c. 61; 2008, cc. 64, 89; 2011, c. 390.

§ 54.1-2956.2. Advisory Board of Occupational Therapy

The Advisory Board of Occupational Therapy, referred to hereinafter as "Advisory Board," shall assist the Board in the manner set forth in this chapter.

1989, c. 306 .

§ 54.1-2956.3. Advisory Board of Occupational Therapy; composition; appointment

The Advisory Board shall be comprised of five members appointed by the Governor for four-year terms. Three members shall be, at the time of appointment, licensed occupational therapists who have practiced for not less than three years, one member shall be a physician licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large. Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term.

1989, c. 306; 2004, c. 61.

§ 54.1-2956.4. Advisory Board of Occupational Therapy; powers

The Advisory Board shall, under the authority of the Board:

1. Recommend to the Board, for its promulgation into regulation, the criteria for licensure as an occupational therapist or an occupational therapy assistant and the standards of professional conduct for holders of licenses.

2. Assess the qualifications of applicants for licensure and recommend licensure when applicants meet the required criteria. The recommendations of the Advisory Board on licensure of applicants shall be presented to the Board, which shall then issue or deny licenses. Any applicant who is aggrieved by a denial of recommendation on licensure of the Advisory Board may appeal to the Board.

3. Receive investigative reports of professional misconduct and unlawful acts and recommend sanctions when appropriate. Any recommendation of sanctions shall be presented to the Board, which may then impose sanctions or take such other action as may be warranted by law.

4. Assist in such other matters dealing with occupational therapy as the Board may in its discretion direct.

1989, c. 306; 1998, c. 593; 2004, c. 61; 2008, cc. 64, 89.

§ 54.1-2956.5. Unlawful to practice occupational therapy without license

A. It shall be unlawful for any person not holding a current and valid license from the Board to practice occupational therapy or to claim to be an occupational therapist or to assume the title "Occupational Therapist," "Occupational Therapist, Licensed," "Licensed Occupational Therapist," or any similar term, or to use the designations "O.T." or "O.T.L." or any variation thereof. However, a person who has graduated from a duly accredited educational program in occupational therapy may practice with the title "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has received a failing score on any examination required by the Board or until six months from the date of graduation, whichever occurs sooner.

B. It shall be unlawful for any person to practice as an occupational therapy assistant as defined in § 54.1-2900 or to hold himself out to be or advertise that he is an occupational therapy assistant or use the designation "O.T.A." or any variation thereof unless such person holds a current and valid license from the Board to practice as an occupational therapy assistant. However, a person who has graduated from a duly accredited occupational therapy assistant education program may practice with the title "Occupational Therapy Assistant, License Applicant" or "O.T.A.-Applicant" until he has received a failing score on any examination required by the Board or until six months from the date of graduation, whichever occurs sooner.

1989, c. 306; 1998, c. 593; 2000, c. 782; 2004, c. 61; 2008, cc. 64, 89; 2014, c. 252.

§§ 54.1-2956.6, 54.1-2956.7. Repealed

Repealed by Acts 1994, c. 803, effective January 1, 1997.

§ 54.1-2956.8. Advisory Board on Radiological Technology; appointments; terms; etc

The Advisory Board on Radiological Technology shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, registration and regulation of certified radiological technology practitioners.

The Advisory Board shall consist of five members to be appointed by the Governor as follows: three members shall be licensed radiological technology practitioners who have been practicing in the Commonwealth for not less than three years prior to their appointments, one member shall be a board-certified radiologist licensed in the Commonwealth, and one member shall be a citizen member appointed from the Commonwealth at large. Beginning July 1, 2011, the Governor's appointments shall be staggered as follows: two members for a term of one year, one member for

a term of two years, and two members for a term of three years. Thereafter, appointments shall be for four-year terms.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.

1990, c. 966; 2002, c. 698; 2011, cc. 691, 714.

§ 54.1-2956.8:1. Unlawful to practice radiologic technology without license; unlawful designation as a radiologist assistant, radiologic technologist, or radiologic technologist, limited; Board to regulate radiologist assistants and radiologic technologists

Except as set forth herein, it shall be unlawful for a person to practice or hold himself out as practicing as a radiologist assistant, radiologic technologist, or radiologic technologist, limited, unless he holds a license as such issued by the Board.

In addition, it shall be unlawful for any person who is not licensed under this chapter whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in conjunction with his name the words "licensed radiologist assistant," "licensed radiologic technologist" or "licensed radiologic technologist, limited" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice radiologic technology.

The Board shall prescribe by regulation the qualifications governing the licensure of radiologist assistants, radiologic technologists, and radiologic technologists, limited. The regulations may include requirements for approved education programs, experience, examinations, and periodic review for continued competency.

The provisions of this section shall not apply to any employee of a hospital licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 acting within the scope of his employment or engagement as a radiologic technologist.

1994, c. 803; 2009, cc. 83, 507.

§ 54.1-2956.8:2. Requisite training and educational achievements of radiologist assistants, radiologic technologists, and radiologic technologists, limited

The Board shall establish a testing program to determine the training and educational achievements of radiologist assistants, radiologic technologists, or radiologic technologists, limited. The Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application. The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as a radiologist assistant, radiologic technologist, or radiologic technologist, limited, during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure.

1994, c. 803; 2009, cc. 83, 507; 2011, c. 390.

§ 54.1-2956.9. Unlawful to practice acupuncture without license; unlawful designation as acupuncturist; Board to regulate acupuncturists

It shall be unlawful for a person to practice or to hold himself out as practicing as an acupuncturist unless he holds a license as such issued by the Board. A person licensed to practice acupuncture, when using the title "acupuncturist," shall include therewith the designation Lic.Ac. or L.Ac.

In addition, it shall be unlawful for any person who is not licensed under this chapter, whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in conjunction with his name the words "licensed acupuncturist" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice acupuncture.

The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of acupuncturists. Such regulations shall not restrict the practice of this profession to practitioners regulated by the Board on June 30, 1992, to practice the healing arts. The regulations shall at a minimum require that, prior to performing acupuncture, any acupuncturist who is not licensed to practice medicine, osteopathy, chiropractic or podiatry shall either (i) obtain written documentation that the patient had received a diagnostic examination from a licensed practitioner of medicine, osteopathy, chiropractic or podiatry with regard to the ailment or condition to be treated or (ii) provide to the patient a written recommendation for such a diagnostic examination. The regulations may include requirements for approved education programs, experience, and examinations. The regulations shall exempt from the requirement for Test of Spoken English (TSE) or the Test of English as a Foreign Language (TOEFL) any foreign speaking acupuncturist who speaks the language of the majority of his clients.

1991, c. 643; 1993, c. 753; 1996, c. 470; 1999, c. 779; 2000, c. 814.

§ 54.1-2956.10. Requisite training and educational achievements of acupuncturists

The Board shall establish a testing program to determine the training and educational achievements of acupuncturists, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.

1991, c. 643; 1993, c. 753 .

§ 54.1-2956.11. Advisory Board on Acupuncture; composition; appointment

The Advisory Board on Acupuncture, hereinafter referred to as the "Advisory Board," shall assist the Board of Medicine in carrying out the provisions of this chapter regarding the qualifications, examination, licensure, and regulation of acupuncturists. Nothing in this chapter shall be construed to authorize the Advisory Board to advise the Board of Medicine in matters pertaining to the regulations of doctors of medicine, osteopathy, chiropractic, or podiatry who are qualified by such regulations to practice acupuncture.

The Advisory Board shall consist of five members to be appointed by the Governor as follows: three members shall be licensed acupuncturists who have been practicing in Virginia for not less than three years; one member shall be a doctor of medicine, osteopathy, chiropractic or podiatry who is qualified to practice acupuncture in Virginia; and one member shall be a citizen member appointed from the Commonwealth at large. Beginning July 1, 2011, the Governor's appointments shall be staggered as follows: two members for a term of one year, two members for a term of two years, and one member for a term of three years. Thereafter, appointments shall be for four-year terms. Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term. No person shall be eligible to serve on the Advisory Board for more than two successive terms.

1991, c. 643; 1993, c. 753; 2000, c. 814; 2002, c. 698; 2003, c. 512; 2011, cc. 691, 714.

§ 54.1-2956.12. Registered surgical technologist; use of title; registration

A. No person shall use or assume the title "registered surgical technologist" unless such person is registered with the Board.

B. The Board shall register as a registered surgical technologist any applicant who presents satisfactory evidence that he (i) holds a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor, (ii) has successfully completed a surgical technologist training program during the person's service as a member of any branch of the armed forces of the United States, or (iii) has practiced as a surgical technologist at any time in the six months prior to July 1, 2014, provided he registers with the Board by December 31, 2016.

2014, c. 531; 2016, c. 99.

§ 54.1-2956.13. Registered surgical assistant; use of title; registration

A. No person shall use or assume the title "registered surgical assistant" unless such person is registered with the Board.

B. The Board shall register as a registered surgical assistant any applicant who presents satisfactory evidence that he (i) holds a current credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting, the National Surgical Assistant Association, or the National Commission for Certification of Surgical Assistants or their successors, (ii) has successfully completed a surgical assistant training program during the person's service as a member of any branch of the armed forces of the United States, or (iii) has practiced as a surgical assistant at any time in the six months prior to July 1, 2014, provided he registers with the Board by December 31, 2016.

2014, c. 531; 2016, c. 99.

§ 54.1-2957. Licensure and practice of nurse practitioners; practice agreements

A. As used in this section:

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.

B. The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in the Commonwealth unless he holds such a joint license.

C. Except as provided in subsection H, a nurse practitioner shall only practice as part of a patient care team. Each member of a patient care team shall have specific responsibilities related to the care of the patient or patients and shall provide health care services within the scope of his usual professional activities. Nurse practitioners practicing as part of a patient care team shall maintain appropriate collaboration and consultation, as evidenced in a written or electronic practice agreement, with at least one patient care team physician. Nurse practitioners who are certified registered nurse anesthetists shall practice under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry. Nurse practitioners appointed as medical examiners pursuant to § 32.1-282 shall practice in collaboration with a licensed doctor of medicine or osteopathic medicine who has been appointed to serve as a medical examiner pursuant to § 32.1-282. Collaboration and consultation among nurse practitioners and patient care team physicians may be provided through telemedicine as described in § 38.2-3418.16. Practice of patient care teams in all settings shall include the periodic review of patient charts or electronic health records and may include visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team.

Physicians on patient care teams may require that a nurse practitioner be covered by a professional liability insurance policy with limits equal to the current limitation on damages set forth in § 8.01-581.15.

Service on a patient care team by a patient care team member shall not, by the existence of such service alone, establish or create liability for the actions or inactions of other team members.

D. The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and nurse practitioners working as part of patient care teams that shall include the development of, and periodic review and revision of, a written or electronic practice agreement; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint

evaluation of the services delivered. Practice agreements shall include a provision for appropriate physician input in complex clinical cases and patient emergencies and for referrals. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the Boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities in collaboration and consultation with a patient care team physician.

E. The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in the Commonwealth.

F. Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.

G. In the event a physician who is serving as a patient care team physician dies, becomes disabled, retires from active practice, surrenders his license or has it suspended or revoked by the Board, or relocates his practice such that he is no longer able to serve, and a nurse practitioner is unable to enter into a new practice agreement with another patient care team physician, the nurse practitioner may continue to practice upon notification to the designee or his alternate of the Boards and receipt of such notification. Such nurse practitioner may continue to treat patients without a patient care team physician for an initial period not to exceed 60 days, provided the nurse practitioner continues to prescribe only those drugs previously authorized by the practice agreement with such physician and to have access to appropriate physician input in complex clinical cases and patient emergencies and for referrals. The designee or his alternate of the Boards shall grant permission for the nurse practitioner to continue practice under this subsection for another 60 days, provided the nurse practitioner provides evidence of efforts made to secure another patient care team physician and of access to physician input.

H. Nurse practitioners licensed by the Boards of Medicine and Nursing in the category of certified nurse midwife shall practice in consultation with a licensed physician in accordance with a practice agreement between the nurse practitioner and the licensed physician. Such practice agreement shall address the availability of the physician for routine and urgent consultation on patient care. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the Boards upon request. The Boards shall jointly promulgate regulations, consistent with the Standards for the Practice of Midwifery set by the American College of Nurse-Midwives, governing such practice.

Code 1950, § 54-274; 1950, p. 98; 1958, c. 161; 1962, c. 127; 1966, c. 657; 1970, c. 69; 1973, cc. 105, 514, 529; 1975, c. 508; 1976, c. 15; 1980, c. 157; 1982, c. 220; 1985, cc. 303, 347; 1986, c. 377; 1988, c. 765; 2006, c. 750; 2012, c. 213; 2015, c. 107; 2016, cc. 308, 409, 495.

§ 54.1-2957.001. Restricted volunteer license for nurse practitioners

A. The Board of Medicine and the Board of Nursing may jointly issue a restricted volunteer license to a nurse practitioner who (i) within the past five years held an unrestricted license as a nurse practitioner in the Commonwealth or another state that was in good standing at the time the license expired or became inactive and (ii) holds an active license or a volunteer restricted license as a registered nurse or a multistate licensure privilege. Nurse practitioners holding a restricted volunteer license issued pursuant to this section shall only practice in public health or community free clinics that provide services to underserved populations.

B. An applicant for a restricted volunteer license shall submit an application on a form provided by the Boards of Medicine and Nursing and attest that he will not receive remuneration directly or indirectly for providing nursing services.

C. A nurse practitioner holding a restricted volunteer license pursuant to this section may obtain prescriptive authority in accordance with the provisions of § 54.1-2957.01.

D. A nurse practitioner holding a restricted volunteer license pursuant to this section shall not be required to complete continuing competency requirements for the first renewal of such license. For subsequent renewals, a nurse practitioner holding a restricted volunteer license shall be required to complete the continuing competency requirements required for renewal of an active license.

E. A restricted volunteer license issued pursuant to this section may be renewed biennially in accordance with the renewal schedule established in regulations jointly promulgated by the Boards of Medicine and Nursing.

F. The application and biennial renewal fee for restricted volunteer licenses pursuant to this section shall be one-half of the fee for an active license.

G. A nurse practitioner holding a restricted volunteer license issued pursuant to this section shall be subject to the provisions of this chapter and all regulations applicable to nurse practitioners practicing in the Commonwealth.

2015, c. 522.

§ 54.1-2957.01. Prescription of certain controlled substances and devices by licensed nurse practitioners

A. In accordance with the provisions of this section and pursuant to the requirements of Chapter 33 (§ 54.1-3300 et seq.), a licensed nurse practitioner, other than a certified registered nurse anesthetist, shall have the authority to prescribe Schedule II through Schedule VI controlled substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.). Nurse practitioners shall have such prescriptive authority upon the provision to the Board of Medicine and the Board of Nursing of such evidence as they may jointly require that the nurse practitioner has entered into and is, at the time of writing a prescription, a party to a written or electronic practice agreement with a patient care team physician that clearly states the prescriptive practices of the nurse practitioner. Such

written or electronic practice agreements shall include the controlled substances the nurse practitioner is or is not authorized to prescribe and may restrict such prescriptive authority as described in the practice agreement. Evidence of a practice agreement shall be maintained by a nurse practitioner pursuant to § 54.1-2957. Practice agreements authorizing a nurse practitioner to prescribe controlled substances or devices pursuant to this section shall either be signed by the patient care team physician who is practicing as part of a patient care team with the nurse practitioner or shall clearly state the name of the patient care team physician who has entered into the practice agreement with the nurse practitioner.

B. It shall be unlawful for a nurse practitioner to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the written or electronic practice agreement.

C. The Board of Nursing and the Board of Medicine shall promulgate such regulations governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

Regulations promulgated pursuant to this section shall include, at a minimum, such requirements as may be necessary to ensure continued nurse practitioner competency, which may include continuing education, testing, or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients.

D. This section shall not limit the functions and procedures of certified registered nurse anesthetists or of any nurse practitioners which are otherwise authorized by law or regulation.

E. The following restrictions shall apply to any nurse practitioner authorized to prescribe drugs and devices pursuant to this section:

1. The nurse practitioner shall disclose to the patient at the initial encounter that he is a licensed nurse practitioner. Any member of a patient care team shall disclose, upon request of a patient or his legal representative, the name of the patient care team physician and information regarding how to contact the patient care team physician.

2. Physicians shall not serve as a patient care team physician on a patient care team at any one time to more than six nurse practitioners.

F. This section shall not prohibit a licensed nurse practitioner from administering controlled substances in compliance with the definition of "administer" in § 54.1-3401 or from receiving and dispensing manufacturers' professional samples of controlled substances in compliance with the provisions of this section.

G. Notwithstanding any provision of law or regulation to the contrary, a nurse practitioner licensed by the Boards of Nursing and Medicine in the category of certified nurse midwife and holding a license for prescriptive authority may prescribe (i) Schedules II through V controlled

substances in accordance with any prescriptive authority included in a practice agreement with a licensed physician pursuant to subsection H of § 54.1-2957 and (ii) Schedule VI controlled substances without the requirement for inclusion of such prescriptive authority in a practice agreement.

1991, cc. 519, 524; 1992, c. 409; 1995, c. 506; 1999, c. 745; 2000, c. 924; 2005, c. 926; 2006, c. 494; 2012, c. 213; 2016, c. 495.

§ 54.1-2957.02. When nurse practitioner signature accepted

Whenever any law or regulation requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit or endorsement by a nurse practitioner.

2004, c. 855.

§ 54.1-2957.03. Certified nurse midwives; required disclosures; liability

A. As used in this section, "birthing center" means a facility outside a hospital that provides maternity services.

B. A certified nurse midwife who provides health care services to a patient outside of a hospital or birthing center shall disclose to that patient, when appropriate, information on health risks associated with births outside of a hospital or birthing center, including but not limited to risks associated with vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk pregnancies, and births involving multiple gestation.

C. The certified nurse midwife who provided health care to a patient shall be liable for the midwife's negligent, grossly negligent, or willful and wanton acts or omissions. Except as otherwise provided by law, any (i) doctor of medicine or osteopathy who did not collaborate or consult with the midwife regarding the patient and who has not previously treated the patient for this pregnancy, (ii) nurse, (iii) prehospital emergency medical personnel, or (iv) hospital as defined in § 32.1-123 or agents thereof, who provides screening and stabilization health care services to a patient as a result of a certified nurse midwife's negligent, grossly negligent, or willful and wanton acts or omissions, shall be immune from liability for acts or omissions constituting ordinary negligence.

2006, c. 750; 2009, c. 646; 2016, c. 495.

§§ 54.1-2957.1 through 54.1-2957.3. Repealed

Repealed by Acts 1996, cc. 152 and 158.

§ 54.1-2957.4. Licensure as athletic trainer required; requisite training and educational requirements; powers of the Board concerning athletic training

A. It shall be unlawful for any person to practice or to hold himself out as practicing as an athletic trainer unless he holds a license as an athletic trainer issued by the Board. The Board shall issue

licenses to practice athletic training to applicants for such licensure who meet the requirements of this chapter and the Board's regulations.

B. The Board shall establish criteria for the licensure of athletic trainers to ensure the appropriate training and educational credentials for the practice of athletic training. Such criteria may include experiential requirements and shall include one of the following: (i) a Virginia testing program to determine the quality of the training and educational credentials for and competence of athletic trainers, (ii) successful completion of a training program and passage of the certifying examination administered by the National Athletic Training Association Board of Certification resulting in certification as an athletic trainer by such national association, or (iii) completion of another Board-approved training program and examination.

C. At its discretion, the Board may grant provisional licensure to persons who have successfully completed an approved training program or who have met requisite experience criteria established by the Board. Such provisional licensure shall expire as provided for in the regulations of the Board.

D. The Board shall promulgate such regulations as may be necessary for the licensure of athletic trainers and the issuance of licenses to athletic trainers to practice in the Commonwealth. The Board's regulations shall assure the competence and integrity of any person claiming to be an athletic trainer or who engages in the practice of athletic training.

1999, cc. 639, 682, 747; 2004, c. 669; 2013, c. 144.

§ 54.1-2957.5. Advisory Board on Athletic Training established; duties; composition; appointment; terms

A. The Advisory Board on Athletic Training shall assist the Board in formulating its requirements for the licensure of athletic trainers. In the exercise of this responsibility, the Advisory Board shall recommend to the Board the criteria for licensure of athletic trainers and the standards of professional conduct for licensees. The Advisory Board shall also assist in such other matters relating to the practice of athletic training as the Board may require.

B. The Advisory Board shall consist of five members appointed by the Governor for four-year terms. The first appointments shall provide for staggered terms with two members being appointed for a two-year term, two members being appointed for a three-year term and one member being appointed for a four-year term. Three members shall be at the time of appointment athletic trainers who are currently licensed by the Board and who have practiced in Virginia for not less than three years, including one athletic trainer employed at a secondary school, one employed at an institution of higher education, and one employed in the private sector; one member shall be a physician licensed to practice medicine in the Commonwealth; and one member shall be a citizen appointed by the Governor from the Commonwealth at large.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two full consecutive terms.

1999, cc. 639, 682, 747; 2001, c. 61; 2004, c. 669; 2011, cc. 691, 714.

§ 54.1-2957.6. Exceptions to athletic trainer licensure

A. The provisions of this section shall not be construed to prohibit any individual from providing first aid, nor any coach, physical education instructor or other person from (i) conducting or assisting with exercise or conditioning programs or classes within the scope of their duties as employees or volunteers or (ii) applying protective taping to an uninjured body part.

B. The requirements for licensure of athletic trainers shall not prevent student athletic trainers from practicing athletic training under the supervision and control of a licensed athletic trainer pursuant to regulations promulgated by the Board.

C. Notwithstanding the provisions of §§ 54.1-2957.4 and 54.1-2957.5, any person who, prior to June 30, 2004, is employed in Virginia as an athletic trainer, or in the performance of his employment duties engages in the practice of athletic training and is certified pursuant to this section and §§ 54.1-2957.4 and 54.1-2957.5 as such statutes were in effect on June 30, 2004, shall not be required to obtain a license from the Board to continue to be so employed until July 1, 2005.

1999, cc. 639, 682, 747; 2001, c. 61; 2003, c. 529; 2004, c. 669.

§ 54.1-2957.7. Licensed midwife and practice of midwifery; definitions

"Midwife" means any person who provides primary maternity care by affirmative act or conduct prior to, during, and subsequent to childbirth, and who is not licensed as a doctor of medicine or osteopathy or certified nurse midwife.

"Practicing midwifery" means providing primary maternity care that is consistent with a midwife's training, education, and experience to women and their newborns throughout the childbearing cycle, and identifying and referring women or their newborns who require medical care to an appropriate practitioner.

2005, cc. 719, 917.

§ 54.1-2957.8. Licensure of midwives; requisite training and educational requirements; fees

A. It shall be unlawful for any person to practice midwifery in the Commonwealth or use the title of licensed midwife unless he holds a license issued by the Board. The Board may license an applicant as a midwife after such applicant has submitted evidence satisfactory to the Board that he has obtained the Certified Professional Midwife (CPM) credential pursuant to regulations adopted by the Board and in accordance with the provisions of §§ 54.1-2915 and 54.1-2916.

B. Persons seeking licensure as a midwife shall submit such information as required in the form and manner determined by the Board.

C. Persons seeking licensure shall pay the required license fee as determined by the Board.

2005, cc. 719, 917.

§ 54.1-2957.9. Regulation of the practice of midwifery

The Board shall adopt regulations governing the practice of midwifery, upon consultation with the Advisory Board on Midwifery. The regulations shall (i) address the requirements for licensure to practice midwifery, including the establishment of standards of care, (ii) be consistent with the North American Registry of Midwives' current job description for the profession and the National Association of Certified Professional Midwives' standards of practice, except that prescriptive authority and the possession and administration of controlled substances shall be prohibited, (iii) ensure independent practice, (iv) require midwives to disclose to their patients, when appropriate, options for consultation and referral to a physician and evidence-based information on health risks associated with birth of a child outside of a hospital or birthing center, as defined in § 54.1-2957.03, including risks associated with vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk pregnancies, and births involving multiple gestation, (v) provide for an appropriate license fee, and (vi) include requirements for licensure renewal and continuing education. Such regulations shall not (a) require any agreement, written or otherwise, with another health care professional or (b) require the assessment of a woman who is seeking midwifery services by another health care professional.

License renewal shall be contingent upon maintaining a Certified Professional Midwife certification.

2005, cc. 719, 917; 2009, c. 646; 2016, c. 495.

§ 54.1-2957.10. Advisory Board on Midwifery established; membership; duties; terms

A. The Advisory Board on Midwifery is established as an advisory board in the executive branch of state government. The purpose of the Advisory Board is to assist the Board of Medicine in formulating regulations pertaining to the practice of midwifery. The Advisory Board shall also assist in such other matters relating to the practice of midwifery as the Board may require.

B. The Advisory Board shall consist of five nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly, including three Certified Professional Midwives, one doctor of medicine or osteopathy or certified nurse midwife who is licensed to practice in the Commonwealth and who has experience in out-of-hospital birth settings, and one citizen who has used out-of-hospital midwifery services. Nonlegislative citizen members of the Advisory Board shall be citizens of the Commonwealth of Virginia.

The initial appointments shall provide for staggered terms with two members being appointed for two-year terms, two members being appointed for three-year terms, and one member being appointed for a four-year term. Thereafter, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eli-

gibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

C. The Advisory Board shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Advisory Board shall be held at the call of the chairman or whenever the majority of the members so request.

D. Members shall receive such compensation for the discharge of their duties as provided in § 2.2-2813. All members shall be reimbursed for reasonable and necessary expenses incurred in the discharge of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Board of Medicine.

E. The Department of Health Professions shall provide staff support to the Advisory Board. All agencies of the Commonwealth shall provide assistance to the Advisory Board, upon request.

2005, cc. 719, 917; 2008, c. 36.

§ 54.1-2957.11. Requirements for disclosure

Any person practicing as a licensed midwife shall provide disclosure of specific information in writing to any client to whom midwifery care is provided. Such disclosure shall include (i) a description of the midwife's qualifications, experience, and training; (ii) a written protocol for medical emergencies, including hospital transport, particular to each client; (iii) a description of the midwives' model of care; (iv) a copy of the regulations governing the practice of midwifery; (v) a statement concerning the licensed midwife's malpractice or liability insurance coverage; (vi) a description of the right to file a complaint with the Board of Medicine and the procedures for filing such complaint; and (vii) such other information as the Board of Medicine determines is appropriate to allow the client to make an informed choice to select midwifery care.

2005, cc. 719, 917.

§ 54.1-2957.12. Immunity

No person other than the licensed midwife who provided care to the patient shall be liable for the midwife's negligent, grossly negligent or willful and wanton acts or omissions. Except as otherwise provided by law, no other licensed midwife, doctor of medicine or osteopathy, nurse, prehospital emergency medical personnel, or hospital as defined in § 32.1-123, or agents thereof, shall be exempt from liability (i) for their own subsequent and independent negligent, grossly negligent or willful and wanton acts or omissions or (ii) if such person has a business relationship with the licensed midwife who provided care to the patient. A doctor of medicine or osteopathy, nurse, prehospital emergency medical person, or hospital as defined in § 32.1-123, or agents thereof, shall not be deemed to have established a business relationship or relationship of agency, employment, partnership, or joint venture with the licensed midwife solely by providing consultation to or accepting referral from the midwife.

2005, cc. 719, 917.

§ 54.1-2957.13. Exceptions

The provisions of §§ 54.1-2957.7 through 54.1-2957.12 shall not prevent or prohibit:

1. Any licensed midwife from delegating to an apprentice or personnel in his personal employ and supervised by him such activities or functions that are nondiscretionary and that do not require the exercise of professional judgment for their performance, if such activities or functions are authorized by and performed for the licensed midwife and responsibility for such activities or functions is assumed by the licensed midwife; or

2. Any person from performing tasks related to the practice of midwifery under the direct and immediate supervision of a licensed doctor of medicine or osteopathy, a certified nurse midwife, or a licensed midwife during completion of the North American Registry of Midwives' Portfolio Evaluation Process Program within a time period specified in regulations adopted by the Board or while enrolled in an accredited midwifery education program.

2005, cc. 719, 917.

§ 54.1-2957.14. Advisory Board on Polysomnographic Technology; appointment; terms; duties

A. The Advisory Board on Polysomnographic Technology shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed polysomnographic technologists.

The Advisory Board shall consist of five members appointed by the Governor for four-year terms. Three members shall be at the time of appointment polysomnographic technologists who have practiced for not less than three years, one member shall be a physician who specializes in the practice of sleep medicine and is licensed to practice medicine in the Commonwealth, and one member shall be appointed by the Governor from the Commonwealth at large.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two consecutive terms.

B. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a polysomnographic technologist and the standards of professional conduct for holders of polysomnographic licenses.

The Advisory Board shall also assist in such other matters dealing with polysomnographic technology as the Board may in its discretion direct.

2010, c. 838.

§ 54.1-2957.15. Unlawful to practice as a polysomnographic technologist without a license

A. It shall be unlawful for any person not holding a current and valid license from the Board of Medicine to practice as a polysomnographic technologist or to assume the title "licensed polysomnographic technologist," "polysomnographic technologist," or "licensed sleep tech."

B. Nothing in this section shall be construed to prohibit a health care provider licensed pursuant to this title from engaging in the full scope of practice for which he is licensed, including, but not limited to, respiratory care professionals.

C. For the purposes of this chapter, unless the context requires otherwise:

"Polysomnographic technology" means the process of analyzing, scoring, attended monitoring, and recording of physiologic data during sleep and wakefulness to assist in the clinical assessment and diagnosis of sleep/wake disorders and other disorders, syndromes, and dysfunctions that either are sleep related, manifest during sleep, or disrupt normal sleep/wake cycles and activities.

"Practice of polysomnographic technology" means the professional services practiced in any setting under the direction and supervision of a licensed physician involving the monitoring, testing, and treatment of individuals suffering from any sleep disorder. Other procedures include but are not limited to:

a. Application of electrodes and apparatus necessary to monitor and evaluate sleep disturbances, including application of devices that allow a physician to diagnose and treat sleep disorders, which disorders include but shall not be limited to insomnia, sleep-related breathing disorders, movement disorders, disorders of excessive somnolence, and parasomnias;

b. Under the direction of a physician, institution and evaluation of the effectiveness of therapeutic modalities and procedures including the therapeutic use of oxygen and positive airway pressure (PAP) devices, such as continuous positive airway pressure (CPAP) and bi-level positive airway pressure of non-ventilated patients;

c. Initiation of cardiopulmonary resuscitation, maintenance of patient's airway (which does not include endotracheal intubation);

d. Transcription and implementation of physician orders pertaining to the practice of polysomnographic technology;

e. Initiation of treatment changes and testing techniques required for the implementation of polysomnographic protocols under the direction and supervision of a licensed physician; and

f. Education of patients and their families on the procedures and treatments used during polysomnographic technology or any equipment or procedure used for the treatment of any sleep disorder.

2010, c. 838.

§ 54.1-2957.16. Licensure of behavior analysts and assistant behavior analysts; requirements; powers of the Board

A. It shall be unlawful for any person to practice or to hold himself out as practicing as a behavior analyst or to use the title "Licensed Behavior Analyst" unless he holds a license as a behavior analyst issued by the Board. It shall be unlawful for any person to practice or to hold himself out as

practicing as an assistant behavior analyst or to use the title "Licensed Assistant Behavior Analyst" unless he holds a license as an assistant behavior analyst issued by the Board. The Board shall issue licenses to practice as a behavior analyst or an assistant behavior analyst to applicants for licensure who meet the requirements of this chapter and the Board's regulations.

B. The Board shall establish criteria for licensure as a behavior analyst, which shall include, but not be limited to, the following:

1. Documentation that the applicant is currently certified as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;

2. Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary; and

3. Documentation that the applicant for licensure has not had his license or certification as a behavior analyst or as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction.

C. The Board shall establish criteria for licensure as an assistant behavior analyst, which shall include, but not be limited to, the following:

1. Documentation that the applicant is currently certified as a Board Certified Assistant Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;

2. Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary;

3. Documentation that the applicant for licensure has not had his license or certification as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction; and

4. Documentation that the applicant's work is supervised by a licensed behavior analyst in accordance with the supervision requirements and procedures established by the Board.

D. The Board shall promulgate such regulations as may be necessary to implement the provisions of this chapter related to (i) application for and issuance of licenses to behavior analysts or assistant behavior analysts, (ii) requirements for licensure as a behavior analyst or an assistant behavior analyst, (iii) standards of practice for licensed behavior analysts or licensed assistant behavior analysts, (iv) requirements and procedures for the supervision of a licensed assistant behavior analyst by a licensed behavior analyst, and (v) requirements and procedures for supervision by licensed

behavior analysts and licensed assistant behavior analysts of unlicensed individuals who assist in the provision of applied behavior analysis services.

E. The Board shall establish a fee, determined in accordance with methods used to establish fees for other health professionals licensed by the Board of Medicine, to be paid by all applicants for licensure as a behavior analyst or assistant behavior analyst.

2012, c. 3.

§ 54.1-2957.17. Exceptions to licensure requirements

A. The provisions of § 54.1-2957.16 shall not be construed as prohibiting any professional licensed, certified, or registered by a health regulatory board from acting within the scope of his practice.

B. The provisions of § 54.1-2957.16 shall not be construed as prohibiting or restricting the applied behavior analysis activities of a student participating in a defined course, internship, practicum, or program of study at a college or university, provided such activities are supervised by a member of the faculty of the college or university or by a licensed behavior analyst and such student does not hold himself out as a licensed behavior analyst and is identified as a "behavior analyst student," "behavior analyst intern," or "behavior analyst trainee."

C. The provisions of § 54.1-2957.16 shall not be construed as prohibiting or restricting the activities of unlicensed individuals pursuing supervised experiential training to meet eligibility requirements for certification by the Behavior Analyst Certification Board or for state licensure, provided such activities are supervised by a licensed behavior analyst who has been approved by the Behavior Analyst Certification Board to provide supervision, the individual does not hold himself out as a licensed behavior analyst, and no more than five years have elapsed from the date on which the supervised experiential training began.

D. The provisions of § 54.1-2957.16 shall not be construed as prohibiting or restricting the activities of an individual employed by a school board or by a school for students with disabilities licensed by the Board of Education from providing behavior analysis when such behavior analysis is performed as part of the regular duties of his office or position and he receives no compensation in excess of the compensation he regularly receives for the performance of the duties of his office or position. No person exempted from licensure pursuant to this subsection shall hold himself out as a licensed behavior analyst or a licensed assistant behavior analyst unless he holds a license as such issued by the Board.

2012, c. 3; 2014, c. 584.

§ 54.1-2957.18. Advisory Board on Behavior Analysis

A. The Advisory Board on Behavior Analysis (Advisory Board) shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed behavior analysts and licensed assistant behavior analysts.

B. The Advisory Board shall consist of five members appointed by the Governor for four-year terms as follows: two members shall be, at the time of appointment, licensed behavior analysts who have practiced for at least three years; one member shall be, at the time of appointment, a licensed assistant behavior analyst who has practiced for not less than three years; one member shall be a physician licensed by the Board who is familiar with the principles of behavior analysis; and one member shall be a consumer of applied behavior analysis who does not hold a license as a behavior analyst or assistant behavior analyst who is appointed by the Governor from the Commonwealth at large. Vacancies occurring other than by expiration of terms shall be filled for the unexpired term.

C. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a behavior analyst or an assistant behavior analyst and the standards of professional conduct for holders of such licenses.

The Advisory Board shall also assist in such other matters relating to behavior analysis as the Board in its discretion may direct.

2014, c. 584.

§ 54.1-2957.19. Genetic counseling; regulation of the practice; license required; licensure; temporary license

A. The Board shall adopt regulations governing the practice of genetic counseling, upon consultation with the Advisory Board on Genetic Counseling. The regulations shall (i) set forth the requirements for licensure to practice genetic counseling, (ii) provide for appropriate application and renewal fees, (iii) include requirements for licensure renewal and continuing education, (iv) be consistent with the American Board of Genetic Counseling's current job description for the profession and the standards of practice of the National Society of Genetic Counselors, and (v) allow for independent practice.

B. It shall be unlawful for a person to practice or hold himself out as practicing genetic counseling in the Commonwealth without a valid, unrevoked license issued by the Board. No unlicensed person may use in connection with his name or place of business the title "genetic counselor," "licensed genetic counselor," "gene counselor," "genetic consultant," or "genetic associate" or any words, letters, abbreviations, or insignia indicating or implying a person holds a genetic counseling license.

C. An applicant for licensure as a genetic counselor shall submit evidence satisfactory to the Board that the applicant (i) has earned a master's degree from a genetic counseling training program that is accredited by the Accreditation Council of Genetic Counseling and (ii) holds a current, valid certificate issued by the American Board of Genetic Counseling or American Board of Medical Genetics to practice genetic counseling.

D. The Board shall waive the requirements of a master's degree and American Board of Genetic Counseling or American Board of Medical Genetics certification for license applicants who (i) apply

for licensure before July 1, 2016; (ii) comply with the Board's regulations relating to the National Society of Genetic Counselors Code of Ethics; (iii) have at least 20 years of documented work experience practicing genetic counseling; (iv) submit two letters of recommendation, one from a genetic counselor and another from a physician; and (v) have completed, within the last five years, 25 hours of continuing education approved by the National Society of Genetic Counselors or the American Board of Genetic Counseling.

E. The Board may grant a temporary license to an applicant who has been granted Active Candidate Status by the American Board of Genetic Counseling and has paid the temporary license fee. Temporary licenses shall be valid for a period of up to one year. An applicant shall not be eligible for temporary license renewal upon expiration of Active Candidate Status as defined by the American Board of Genetic Counseling. A person practicing genetic counseling under a temporary license shall be supervised by a licensed genetic counselor or physician.

2014, cc. 10, 266.

§ 54.1-2957.20. Exemptions

The provisions of this chapter shall not prohibit:

1. A licensed and qualified health care provider from practicing within his scope of practice, provided he does not use the title "genetic counselor" or any other title tending to indicate he is a genetic counselor unless licensed in the Commonwealth;

2. A student from performing genetic counseling as part of an approved academic program in genetic counseling, provided he is supervised by a licensed genetic counselor and designated by a title clearly indicating his status as a student or trainee; or

3. A person who holds a current, valid certificate issued by the American Board of Genetic Counseling or American Board of Medical Genetics to practice genetic counseling, who is employed by a rare disease organization located in another jurisdiction, and who complies with the licensure requirements of that jurisdiction from providing genetic counseling in the Commonwealth fewer than 10 days per year.

2014, cc. 10, 266.

§ 54.1-2957.21. Conscience clause

Nothing in this chapter shall be construed to require any genetic counselor to participate in counseling that conflicts with their deeply-held moral or religious beliefs, nor shall licensing of any genetic counselor be contingent upon participation in such counseling. Refusal to participate in counseling that conflicts with the counselor's deeply-held moral or religious beliefs shall not form the basis for any claim of damages or for any disciplinary or recriminatory action against the genetic counselor, provided the genetic counselor informs the patient that he will not participate in such counseling and offers to direct the patient to the online directory of licensed genetic counselors maintained by the Board.

2014, cc. 10, 266.

§ 54.1-2957.22. Advisory Board on Genetic Counseling established; membership; terms

A. The Advisory Board on Genetic Counseling (Advisory Board) is established as an advisory board in the executive branch of state government. The Advisory Board shall assist the Board of Medicine in formulating regulations related to the practice of genetic counseling. The Advisory Board shall also assist in such other matters relating to the practice of genetic counseling as the Board may require.

B. The Advisory Board shall consist of five nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly, and shall include three licensed genetic counselors, one doctor of medicine or osteopathy who has experience with genetic counseling services, and one nonlegislative citizen member who has used genetic counseling services. Members of the Advisory Board shall be citizens of the Commonwealth.

After the initial staggering of terms, members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

2014, cc. 10, 266.

Article 5 - APPROVAL OF EDUCATIONAL PROGRAMS

§ 54.1-2958. Procedure for determining acceptability of foreign courses of study and educational institutions

The Board may promulgate regulations and guidelines for determining the acceptability of courses of study and educational institutions in foreign countries. These regulations and guidelines shall include time limitations within which approval shall be granted or denied and for reapplication in cases of denial of approval, as well as notice of deficiencies in need of remediation, and a procedure for applying for renewal of approval.

The proceedings for approval shall be conducted pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The Board shall assess any institution electing formal proceedings under § 2.2-4020 the cost of such proceedings. These costs shall be limited to (i) the actual cost of recording the proceedings, including the preparation of a transcript, and (ii) the costs of the site visit committee, if deemed necessary by the Board, and preparation of the committee's testimony.

1985, c. 337, § 54-306.1:2; 1988, c. 765.

§ 54.1-2959. Supervised training programs; students enrolled in schools of medicine or chiropractic schools allowed to engage in certain activities; prohibition of unauthorized pelvic exams

A. Students enrolled in schools of medicine may (i) participate in preceptorship programs that are a part of the training program of the medical school or (ii) practice in clinics, hospitals, educational institutions, private medical offices, or other health facilities, in a program approved by the school, under the direct tutorial supervision of a licensed physician who holds an appointment on the faculty of a school of medicine approved by the Board.

B. Students enrolled in chiropractic schools may (i) participate in preceptorship programs that are a part of the training program of the chiropractic school or (ii) practice in clinics, hospitals, educational institutions, private medical offices, or other health facilities, in a program approved by the school, under the direct tutorial supervision of a licensed chiropractor who holds an appointment on the faculty of a chiropractic school approved by the Board.

C. Students participating in a course of professional instruction or clinical training program shall not perform a pelvic examination on an anesthetized or unconscious female patient unless the patient or her authorized agent gives informed consent to such examination, the performance of such examination is within the scope of care ordered for the patient, or in the case of a patient incapable of giving informed consent, the examination is necessary for diagnosis or treatment of such patient.

1984, c. 710, § 54-276.7:2; 1988, c. 765; 2007, c. 678; 2015, c. 122.

§ 54.1-2960. Medical students in hospitals

Subject to such restrictions as the Board, in consultation with the deans of the medical schools of this Commonwealth, may prescribe by regulation, third and fourth year medical students engaged in a course of study approved by the Board may be employed by legally established and licensed hospitals to prepare medical history information and perform physical examinations where such practice is confined strictly to persons who are bona fide patients within the hospital or who receive treatment and advice in an outpatient department of the hospital. Such students shall be responsible and accountable at all times to a licensed physician member of the hospital staff. This section shall not have the effect of removing the responsibility of the attending physician to assure that a licensed physician shall do a history and physical examination on each hospitalized patient.

1977, c. 568, § 54-276.7:1; 1988, c. 765.

§ 54.1-2961. Interns and residents in hospitals

A. Interns and residents holding temporary licenses may be employed in a legally established and licensed hospital, medical school or other organization operating an approved graduate medical education program when their practice is confined to persons who are bona fide patients within the hospital or other organization or who receive treatment and advice in an outpatient department of the hospital or an institution affiliated with the graduate medical education program.

B. Such intern or resident shall be responsible and accountable at all times to a licensed member of the staff. The training of interns and residents shall be consistent with the requirements of the

agencies cited in subsection D and the policies and procedures of the hospital, medical school or other organization operating a graduate medical education program. No intern or resident holding a temporary license may be employed by any hospital or other organization operating an approved graduate medical education program unless he has completed successfully the preliminary academic education required for admission to examinations given by the Board in his particular field of practice.

C. No intern or resident holding a temporary license shall serve in any hospital or other organization operating an approved graduate medical education program in this Commonwealth for longer than the time prescribed by the graduate medical education program. The Board may prescribe regulations not in conflict with existing law and require such reports from hospitals or other organizations in the Commonwealth as may be necessary to carry out the provisions of this section.

D. Such employment shall be a part of an internship or residency training program approved by the Accreditation Council for Graduate Medical Education or American Osteopathic Association or American Podiatric Medical Association or Council on Chiropractic Education. No unlicensed intern or resident may be employed as an intern or resident by any hospital or other organization operating an approved graduate medical education program. The Board may determine the extent and scope of the duties and professional services which may be rendered by interns and residents.

E. The Board of Medicine shall adopt guidelines concerning the ethical practice of physicians practicing in emergency rooms, surgeons, and interns and residents practicing in hospitals, particularly hospital emergency rooms, or other organizations operating graduate medical education programs. These guidelines shall not be construed to be or to establish standards of care or to be regulations and shall be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.). The Medical College of Virginia of Virginia Commonwealth University, the University of Virginia School of Medicine, the Eastern Virginia Medical School, the Medical Society of Virginia, and the Virginia Hospital and Health Care Association shall cooperate with the Board in the development of these guidelines.

The guidelines shall include, but need not be limited to (i) the obtaining of informed consent from all patients or from the next of kin or legally authorized representative, to the extent practical under the circumstances in which medical care is being rendered, when the patient is incapable of making an informed decision, after such patients or other persons have been informed as to which physicians, residents, or interns will perform the surgery or other invasive procedure; (ii) except in emergencies and other unavoidable situations, the need, consistent with the informed consent, for an attending physician to be present during the surgery or other invasive procedure; (iii) policies to avoid situations, unless the circumstances fall within an exception in the Board's guidelines or the policies of the relevant hospital, medical school or other organization operating the graduate medical education program, in which a surgeon, intern or resident represents that he will perform a surgery or other invasive procedure that he then fails to perform; and (iv) policies

addressing informed consent and the ethics of appropriate care of patients in emergency rooms. Such policies shall take into consideration the nonbinding ban developed by the American Medical Association in 2000 on using newly dead patients as training subjects without the consent of the next of kin or other legal representative to extent practical under the circumstances in which medical care is being rendered.

F. The Board shall publish and distribute the guidelines required by subsection E to its licensees.

Code 1950, § 54-276.7; 1952, c. 690; 1958, c. 294; 1964, c. 284; 1975, c. 508; 1978, c. 408; 1986, c. 307; 1987, c. 44; 1988, c. 765; 1998, c. 614; 2002, cc. 87, 478; 2003, c. 482.

Article 6 - GENERAL STANDARDS OF PRACTICE

§ 54.1-2962. Division of fees among physicians prohibited

A. No physician licensed to practice medicine or osteopathy in the Commonwealth shall:

1. Knowingly and willfully, directly or indirectly, share any professional fee received for the provision of health services, as defined in § 54.1-2410, to a patient with another physician licensed to practice medicine or osteopathy in the Commonwealth in return for such other physician's making a referral, as defined in § 54.1-2410, of such patient to the physician providing such health services; or

2. Accept any portion of a professional fee paid to another physician licensed to practice medicine or osteopathy in the Commonwealth for the provision of health services, as defined in § 54.1-2410, to a patient in return for making a referral, as defined in § 54.1-2410, of such patient to the physician providing such health services.

B. This chapter shall not be construed as prohibiting (i) the members of any regularly organized partnership or group practice, as defined in § 54.1-2410, of physicians licensed to practice medicine or osteopathy in the Commonwealth from making any division of their total fees among themselves as they may determine or using their joint fees to defray their joint operating costs; (ii) arrangements permitted under the Practitioner Self-Referral Act (§ 54.1-2410 et seq.); or (iii) payments, business arrangements, or payment practices that would be permitted in accordance with 42 U.S.C. § 1320a-7b(b)(3) if such payments, business arrangements, or payment practices involved an underlying payment source that was a federal health care program, as defined in 42 U.S.C. § 1320a-7b(f), regardless of whether the underlying payment source actually is a federal health care program or other bona fide payment source.

C. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor.

Code 1950, § 54-278; 1956, c. 389; 1988, c. 765; 2016, cc. 76, 104.

§ 54.1-2962.01. Anatomic pathology services; fees

A. No practitioner licensed in accordance with the provisions of this chapter shall charge a fee for anatomic pathology services that is greater than the amount billed to the practitioner for the actual performance of such anatomic pathology services when such services are (i) performed by a

person other than the practitioner or (ii) performed by a person not under the supervision of the practitioner.

B. A practitioner may charge a fee for specimen collection and transportation, provided the fee conforms to the current procedural terminology codes for procedures and services of the American Medical Association and the patient is made aware of the fee in writing prior to collection. For the purposes of this section, "anatomic pathology services" include the gross or microscopic examination and histological processing of human organ tissue; the examination of human cells from fluids, aspirates, washings, brushings, or smears; or other subcellular or molecular pathology services.

2014, c. 81.

§ 54.1-2962.1. Solicitation or receipt of remuneration in exchange for referral prohibited

No practitioner of the healing arts shall knowingly and willfully solicit or receive any remuneration directly or indirectly, in cash or in kind, in return for referring an individual or individuals to a facility or institution as defined in § 37.2-100 or a hospital as defined in § 32.1-123. The Board shall adopt regulations as necessary to carry out the provisions of this section. Such regulations shall exclude from the definition of "remuneration" any payments, business arrangements, or payment practices not prohibited by Title 42, Section 1320a-7b (b) of the United States Code, as amended, or any regulations promulgated pursuant thereto.

1990, c. 379 .

§ 54.1-2962.2. Physician-patient relationship; effect of certain emergency department treatment

A. Any physician-patient relationship that may be created by virtue of an on-call physician or his agent evaluating or treating a patient in the emergency department of a corporation, facility or institution licensed or owned or operated by the Commonwealth to provide health care shall be deemed terminated without further notice upon the discharge of the patient from the emergency department or if the patient is admitted to the corporation, facility or institution, his discharge therefrom, and after completion of follow-up as prescribed by the physician, unless the physician and the patient affirmatively elect to continue the physician-patient relationship.

B. Nothing in this section shall relieve a physician of his post-discharge duties required to satisfy the standard of care pursuant to § 8.01-581.20.

2004, c. 878.

§ 54.1-2963. Selling vitamins or food supplements in connection with a practice of the healing arts

The Board shall have authority to promulgate regulations regulating the sale of vitamins or food supplements by any practitioner of the healing arts from the office in which he practices.

1984, c. 325, § 54-278.2; 1988, c. 765.

§ 54.1-2963.1. Disclosure of medical treatment options

Any physician shall have the authority to disclose fully all medical treatment options to patients whether or not such treatment options are (i) experimental or covered services, (ii) services that the health insurer will not authorize, or (iii) the costs of the treatment will be borne by the health insurer or the patient to facilitate an informed decision by the patient, if the physician determines that such an option is in the best interest of the patient. Any physician who discloses information concerning other medical treatment options to a person with whom he has established a physician-patient relationship shall not be liable to any health insurer, in an action instituted solely on behalf of the health insurer, for any civil damages resulting from the disclosure of such information. This section shall not affect any cause of action a patient may have against a physician.

For the purposes of this section, "medical treatment options" means any alternative or experimental therapeutic, psychiatric, medical treatment or procedure, health care service, drug, or remedy.

2004, c. 675.

§ 54.1-2963.2. (Expires July 1, 2018) Lyme disease testing information disclosure

A. Every licensee or his in-office designee who orders a laboratory test for the presence of Lyme disease shall provide to the patient or his legal representative the following written information:

"ACCORDING TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION, AS OF 2011 LYME DISEASE IS THE SIXTH FASTEST GROWING DISEASE IN THE UNITED STATES.

YOUR HEALTH CARE PROVIDER HAS ORDERED A LABORATORY TEST FOR THE PRESENCE OF LYME DISEASE FOR YOU. CURRENT LABORATORY TESTING FOR LYME DISEASE CAN BE PROBLEMATIC AND STANDARD LABORATORY TESTS OFTEN RESULT IN FALSE NEGATIVE AND FALSE POSITIVE RESULTS, AND IF DONE TOO EARLY, YOU MAY NOT HAVE PRODUCED ENOUGH ANTIBODIES TO BE CONSIDERED POSITIVE BECAUSE YOUR IMMUNE RESPONSE REQUIRES TIME TO DEVELOP ANTIBODIES. IF YOU ARE TESTED FOR LYME DISEASE, AND THE RESULTS ARE NEGATIVE, THIS DOES NOT NECESSARILY MEAN YOU DO NOT HAVE LYME DISEASE. IF YOU CONTINUE TO EXPERIENCE SYMPTOMS, YOU SHOULD CONTACT YOUR HEALTH CARE PROVIDER AND INQUIRE ABOUT THE APPROPRIATENESS OF RETESTING OR ADDITIONAL TREATMENT."

B. Licensees shall be immune from civil liability for the provision of the written information required by this section absent gross negligence or willful misconduct.

2013, c. 215.

§ 54.1-2964. Disclosure of interest in referral facilities and clinical laboratories

A. Any practitioner of the healing arts shall, prior to referral of a patient to any facility or entity engaged in the provision of health-related services, appliances or devices, including but not limited to physical therapy, hearing testing, or sale or fitting of hearing aids or eyeglasses provide the patient with a notice in bold print that discloses any known material financial interest of or

ownership by the practitioner in such facility or entity and states that the services, appliances or devices may be available from other suppliers in the community. In making any such referral, the practitioner of the healing arts may render such recommendations as he considers appropriate, but shall advise the patient of his freedom of choice in the selection of such facility or entity. This section shall not be construed to permit any of the practices prohibited in § 54.1-2914 or Chapter 24.1 (§ 54.1-2410 et seq.) of this title.

In addition, any practitioner of the healing arts shall, prior to ordering any medical test from an independent clinical laboratory for a patient, provide the patient with notice in bold print that discloses any known material financial interest or ownership by the practitioner in such laboratory unless the independent clinical laboratory is operated by a publicly held corporation. The practitioner shall inform the patient about the accreditation status and credentials of the laboratory.

B. The Attorney General, an attorney of the Commonwealth, the attorney for a city, county or town, or any aggrieved patient may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, of the county, city or town, or of any aggrieved patient, to enjoin any violation of this section. The circuit court having jurisdiction may enjoin such violations, notwithstanding the existence of an adequate remedy at law. When an injunction is issued, the circuit court may impose a civil fine to be paid to the Literary Fund not to exceed $1,000. In any action under this section, it shall not be necessary that damages be proven.

1986, c. 348, § 54-278.3; 1988, cc. 765, 874; 1989, c. 282; 1993, c. 869 .

§ 54.1-2965. Repealed

Repealed by Acts 1991, c. 643 .

§ 54.1-2966. Physicians reporting disabilities to aircraft pilots licensing authorities exempt from liability; testifying in certain proceedings

A. Any physician who, in good faith, reports the existence, or probable existence, of a mental or physical disability or infirmity in any person licensed or certificated to operate any type of aircraft, or any applicant for a license or certificate to operate any type of aircraft, to a governmental agency which is responsible for issuing, renewing, revoking or suspending such licenses or certificates, or which is responsible for air safety, which the physician believes will or reasonably could affect such person's ability to safely operate the aircraft he is licensed or certificated, or is seeking to be licensed or certificated, to operate shall not be liable for any civil damages resulting from such reporting, regardless of whether such person is, or has been, a patient of such physician, except when such reporting was done with malice.

B. Notwithstanding any provision of § 8.01-399, any physician may testify in any administrative hearing or other proceeding regarding the issuance, renewal, revocation or suspension of any license or certificate to pilot an aircraft of any person, regardless of whether such person is, or has been, a patient of such physician, giving evidence of the existence or probable existence, of a mental or physical disability or infirmity.

1978, c. 561, § 54-276.9:1; 1988, c. 765.

§ 54.1-2966.1. Physicians reporting disabilities of drivers

Any physician who reports to the Department of Motor Vehicles the existence, or probable existence, of a mental or physical disability or infirmity of any person licensed to operate a motor vehicle which the physician believes affects such person's ability to operate a motor vehicle safely shall not be deemed to have violated the physician-patient privilege unless he has acted in bad faith or with malicious intent.

1988, c. 798, § 54-276.9:2.

§ 54.1-2967. Physicians and others rendering medical aid to report certain wounds

Any physician or other person who renders any medical aid or treatment to any person for any wound which such physician or other person knows or has reason to believe is a wound inflicted by a weapon specified in § 18.2-308 and which wound such physician or other person believes or has reason to believe was not self-inflicted shall as soon as practicable report such fact, including the wounded person's name and address, if known, to the sheriff or chief of police of the county or city in which treatment is rendered. If such medical aid or treatment is rendered in a hospital or similar institution, such physician or other person rendering such medical aid or treatment shall immediately notify the person in charge of such hospital or similar institution, who shall make such report forthwith.

Any physician or other person failing to comply with this section shall be guilty of a Class 3 misdemeanor. Any person participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall be immune from any civil liability in connection therewith, unless it is proved that such person acted in bad faith or with malicious intent.

1970, c. 531, § 54-276.10; 1972, c. 194; 1975, c. 508; 1976, c. 331; 1979, c. 715; 1988, c. 765.

§ 54.1-2968. Information about certain handicapped persons

This chapter shall not be construed to prohibit any duly licensed physician from communicating the identity of any person under age twenty-two who has a physical or mental handicapping condition to appropriate agencies of the Commonwealth or any of its political subdivisions and other information regarding such person or condition which may be helpful to the agency in the planning or conduct of services for handicapped persons.

1972, c. 431, § 54-276.11; 1988, c. 765.

§ 54.1-2969. 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 directors of 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 § 63.2-1517, 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 Juvenile Justice 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 the 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 qualified emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other emergency prior to hospital admission may adversely affect such minor's recovery and no person authorized in this section to consent to such transportation for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon emergency medical services personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation.

However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

E. 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 that 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 § 37.2-100; or

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of medical records related to subdivisions 1 through 4.

F. 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.

G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.

H. Any minor 16 years of age or older 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 17 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.

I. Any judge, local director of social services, Director of the Department of Corrections, Director of the Department of Juvenile Justice, 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.

J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without complying with § 16.1-241.

K. Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care, treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a

minor's other health records, except when the minor's treating physician or the minor's treating clinical psychologist has determined, in the exercise of his professional judgment, that the disclosure of health records to the parent, legal guardian, or person standing in loco parentis would be reasonably likely to cause substantial harm to the minor or another person pursuant to subsection B of § 20-124.6.

Code 1950, § 32-137; 1968, c. 71; 1970, c. 232, § 54-325.2; 1971, Ex. Sess., c. 183; 1972, cc. 323, 823; 1973, c. 337; 1974, cc. 44, 45, 639; 1977, cc. 523, 525; 1978, cc. 10, 401; 1979, c. 720; 1981, cc. 22, 454, 573; 1984, c. 72; 1988, c. 765; 1989, c. 733; 1999, c. 1001; 2000, c. 798; 2002, cc. 315, 747; 2005, cc. 181, 227; 2008, c. 330.

§ 54.1-2970. Medical treatment for certain persons incapable of giving informed consent

When a delay in treatment might adversely affect recovery, a licensed health professional or licensed hospital shall not be subject to liability arising out of a claim based on lack of informed consent or be prohibited from providing surgical, medical or dental treatment to an individual who is receiving service in a facility operated by the Department of Behavioral Health and Developmental Services or who is receiving case management services from a community services board or behavioral health authority and who is incapable of giving informed consent to the treatment by reason of mental illness or intellectual disability under the following conditions:

1. No legally authorized guardian or committee was available to give consent;

2. A reasonable effort is made to advise a parent or other next of kin of the need for the surgical, medical or dental treatment;

3. No reasonable objection is raised by or on behalf of the alleged incapacitated person; and

4. Two physicians, or in the case of dental treatment, two dentists or one dentist and one physician, state in writing that they have made a good faith effort to explain the necessary treatment to the individual, and they have probable cause to believe that the individual is incapacitated and unable to consent to the treatment by reason of mental illness or intellectual disability and that delay in treatment might adversely affect recovery.

The provisions of this section shall apply only to the treatment of physical injury or illness and not to any treatment for a mental, emotional or psychological condition.

Treatment pursuant to this section of an individual's mental, emotional or psychological condition when the individual is unable to make an informed decision and when no legally authorized guardian or committee is available to provide consent shall be governed by regulations adopted by the State Board of Behavioral Health and Developmental Services under § 37.2-400.

Code 1950, § 32-137.01; 1979, c. 212, § 54-325.2:1; 1988, c. 765; 1989, c. 591; 1997, c. 801; 2002, c. 80; 2009, cc. 813, 840; 2012, cc. 476, 507.

§ 54.1-2970.1. Individual incapable of making informed decision; procedure for physical evidence recovery kit examination; consent by minors

A. A licensed physician, physician assistant, nurse practitioner, or registered nurse may perform a physical evidence recovery kit examination for a person who is believed to be the victim of a sexual assault and who is incapable of making an informed decision regarding consent to such examination when:

1. There is a need to conduct the examination before the victim is likely to be able to make an informed decision in order to preserve physical evidence of the alleged sexual assault from degradation;

2. No legally authorized representative or other person authorized to consent to medical treatment on the individual's behalf is reasonably available to provide consent within the time necessary to preserve physical evidence of the alleged sexual assault; and

3. A capacity reviewer, as defined in § 54.1-2982, provides written certification that, based upon a personal examination of the individual, the individual is incapable of making an informed decision regarding the physical evidence recovery kit examination and that, given the totality of the circumstances, the examination should be performed. The capacity reviewer who provides such written certification shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available.

A1. For purposes of this section, if a parent or guardian of a minor refuses to consent to a physical evidence recovery kit examination of the minor, the minor may consent.

B. Any physical evidence recovery kit examination performed pursuant to this section shall be performed in accordance with the requirements of §§ 19.2-11.2 and 19.2-165.1 and shall protect the alleged victim's identity.

C. A licensed physician, physician assistant, nurse practitioner, or registered nurse who exercises due care under the provisions of this act shall not be liable for any act or omission related to performance of an examination in accordance with this section.

2013, cc. 441, 532; 2016, c. 251.

§ 54.1-2971. Repealed

Repealed by Acts 2008, cc. 35 and 77.

§ 54.1-2971.01. Prescription in excess of recommended dosage in certain cases

A. Consistent with § 54.1-3408.1, a physician may prescribe a dosage of a pain-relieving agent in excess of the recommended dosage upon certifying the medical necessity for the excess dosage in the patient's medical record. Any practitioner who prescribes, dispenses or administers an excess dosage in accordance with this section and § 54.1-3408.1 shall not be in violation of the provisions of this title because of such excess dosage, if such excess dosage is prescribed, dispensed or administered in good faith for recognized medicinal or therapeutic purposes.

B. The Board of Medicine shall advise physicians of the provisions of this section and § 54.1-3408.1.

1995, c. 277.

§ 54.1-2971.1. Disclosure for certain treatment of infertility

Before a physician commences treatment of a patient by in vitro fertilization, gamete intrafallopian tube transfer, or zygote intrafallopian tube transfer, including the administration of drugs for the stimulation or suppression of ovulation prefatory thereto, a disclosure form shall have been executed by the patient which includes, but need not be limited to, the rates of success for the particular procedure at the clinic or hospital where the procedure is to be performed. The information disclosed to the patient shall include the testing protocol used to ensure that gamete donors are free from known infection with human immunodeficiency viruses, the total number of live births, the number of live births as a percentage of completed retrieval cycles, and the rates for clinical pregnancy and delivery per completed retrieval cycle bracketed by age groups consisting of women under thirty years of age, women aged thirty through thirty-four years, women aged thirty-five through thirty-nine years, and women aged forty years and older.

1991, c. 492; 1995, c. 519.

§ 54.1-2972. When person deemed medically and legally dead; determination of death; nurses' or physician assistants' authority to pronounce death under certain circumstances

A. A person shall be medically and legally dead if:

1. In the opinion of a physician duly authorized to practice medicine in the Commonwealth, based on the ordinary standards of medical practice, there is the absence of spontaneous respiratory and spontaneous cardiac functions and, because of the disease or condition that directly or indirectly caused these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation would not, in the opinion of such physician, be successful in restoring spontaneous life-sustaining functions, and, in such event, death shall be deemed to have occurred at the time these functions ceased; or

2. In the opinion of a physician, who shall be duly licensed to practice medicine in the Commonwealth and board-eligible or board-certified in the field of neurology, neurosurgery, or critical care medicine, when based on the ordinary standards of medical practice, there is irreversible cessation of all functions of the entire brain, including the brain stem, and, in the opinion of such physician, based on the ordinary standards of medical practice and considering the irreversible cessation of all functions of the entire brain, including the brain stem, and the patient's medical record, further attempts at resuscitation or continued supportive maintenance would not be successful in restoring such functions, and, in such event, death shall be deemed to have occurred at the time when all such functions have ceased.

B. A registered nurse or a physician assistant who practices under the supervision of a physician may pronounce death if the following criteria are satisfied: (i) the nurse is employed by or the physician assistant works at (a) a home health organization as defined in § 32.1-162.7, (b) a hospice as defined in § 32.1-162.1, (c) a hospital or nursing home as defined in § 32.1-123, including state-

operated hospitals for the purposes of this section, (d) the Department of Corrections, or (e) a continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2; (ii) the nurse or physician assistant is directly involved in the care of the patient; (iii) the patient's death has occurred; (iv) the patient is under the care of a physician when his death occurs; (v) the patient's death has been anticipated; (vi) the physician is unable to be present within a reasonable period of time to determine death; and (vii) there is a valid Do Not Resuscitate Order pursuant to § 54.1-2987.1 for the patient who has died. The nurse or physician assistant shall inform the patient's attending and consulting physicians of his death as soon as practicable.

The nurse or physician assistant shall have the authority to pronounce death in accordance with such procedural regulations, if any, as may be promulgated by the Board of Medicine; however, if the circumstances of the death are not anticipated or the death requires an investigation by the Office of the Chief Medical Examiner, the nurse or physician assistant shall notify the Office of the Chief Medical Examiner of the death and the body shall not be released to the funeral director.

This subsection shall not authorize a nurse or physician assistant to determine the cause of death. Determination of cause of death shall continue to be the responsibility of the attending physician, except as provided in § 32.1-263. Further, this subsection shall not be construed to impose any obligation to carry out the functions of this subsection.

This subsection shall not relieve any registered nurse or physician assistant from any civil or criminal liability that might otherwise be incurred for failure to follow statutes or Board of Nursing or Board of Medicine regulations.

C. The alternative definitions of death provided in subdivisions A 1 and A 2 may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.

Code 1950, § 32-364.3:1; 1973, c. 252; 1979, c. 720, § 54-325.7; 1986, c. 237; 1988, c. 765; 1996, c. 1028; 1997, cc. 107, 453; 2002, c. 92; 2004, c. 92; 2010, c. 46; 2011, c. 613; 2012, c. 136; 2014, cc. 73, 583; 2016, c. 97.

§ 54.1-2973. Persons who may authorize postmortem examination of decedent's body

Any of the following persons, in order of priority stated, may authorize and consent to a postmortem examination and autopsy on a decedent's body for the purpose of determining the cause of death of the decedent, for the advancement of medical or dental education and research, or for the general advancement of medical or dental science, if: (i) no person in a higher class exists or no person in a higher class is available at the time authorization or consent is given, (ii) there is no actual notice of contrary indications by the decedent, and (iii) there is no actual notice of opposition by a member of the same or a prior class.

The order of priority shall be as follows: (1) any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825; (2) the spouse; (3) an adult son or daughter; (4) either parent; (5) an adult brother or sister; (6) a guardian of the

person of the decedent at the time of his death; or (7) any other person authorized or under legal obligation to dispose of the body.

If the physician or surgeon has actual notice of contrary indications by the decedent or of opposition to an autopsy by a member of the same or a prior class, the autopsy shall not be performed. The persons authorized herein may authorize or consent to the autopsy after death or before death.

In cases of death where official inquiry is authorized or required by law, the provisions of Article 1 (§ 32.1-277 et seq.) of Chapter 8 of Title 32.1 shall apply. If at the time of death, a postmortem examination is authorized or required by law, any prior authorization or consent pursuant to this section shall not be valid unless the body is released by the Office of the Chief Medical Examiner.

A surgeon or physician acting in accordance with the terms of this section shall not have any liability, civil or criminal, for the performance of the autopsy.

Code 1950, § 32-364.4:1; 1973, c. 357; 1979, c. 720, § 54-325.8; 1986, c. 237; 1988, c. 765; 1998, c. 718; 2014, c. 583.

Article 7 - SEXUAL STERILIZATION

§ 54.1-2974. Sterilization operations for persons 18 years or older capable of informed consent

It shall be lawful for any physician licensed by the Board of Medicine to perform a vasectomy, salpingectomy, or other surgical sexual sterilization procedure on any person 18 years of age or older who has the capacity to give informed consent, when so requested in writing by such person. Prior to or at the time of such request, a full, reasonable, and comprehensible medical explanation as to the meaning and consequences of such an operation and as to alternative methods of contraception shall be given by the physician to the person requesting the operation.

1981, c. 454, § 54-325.9; 1988, c. 765; 2013, c. 671.

§ 54.1-2975. Sterilization operations for certain children incapable of informed consent

It shall be lawful for any physician licensed by the Board of Medicine to perform a vasectomy, salpingectomy, or other surgical sexual sterilization procedure on a person fourteen years of age or older and less than eighteen years of age when:

1. A petition has been filed in the circuit court of the county or city wherein the child resides by the parent or parents having custody of the child or by the child's guardian, spouse, or next friend requesting that the operation be performed;

2. The court has made the child a party defendant, served the child, the child's guardian, if any, the child's spouse, if any, and the child's parent who has custody of the child with notice of the proceedings and appointed for the child an attorney-at-law to represent and protect the child's interests;

3. The court has determined that a full, reasonable, and comprehensible medical explanation as to the meaning, consequences, and risks of the sterilization operation to be performed and as to alternative methods of contraception has been given by the physician to the child upon whom the operation is to be performed, to the child's guardian, if any, to the child's spouse, if any, and, if there is no spouse, to the parent who has custody of the child;

4. The court has determined by clear and convincing evidence that the child's mental abilities are so impaired that the child is incapable of making his or her own decision about sterilization and is unlikely to develop mentally to a sufficient degree to make an informed judgment about sterilization in the foreseeable future;

5. The court, to the greatest extent possible, has elicited and taken into account the views of the child concerning the sterilization, giving the views of the child such weight in its decision as the court deems appropriate;

6. The court has complied with the requirements of § 54.1-2977; and

7. The court has entered an order authorizing a qualified physician to perform the operation not earlier than thirty days after the date of the entry of the order, and thirty days have elapsed. The court order shall state the date on and after which the sterilization operation may be performed.

1981, c. 454, § 54-325.10; 1988, c. 765.

§ 54.1-2976. Sterilization operations for certain adults incapable of informed consent

It shall be lawful for any physician licensed by the Board of Medicine to perform a vasectomy, salpingectomy, or other surgical sexual sterilization procedure on a person eighteen years of age or older, who does not have the capacity to give informed consent to such an operation, when:

1. A petition has been filed in the circuit court of the county or city wherein the person resides by the person's parent or parents, guardian, spouse, or next friend requesting that the operation be performed;

2. The court has made the person a party defendant, served the person, the person's guardian, if any, the person's spouse, if any, and if there is no spouse, the person's parent with notice of the proceedings and appointed for the person an attorney-at-law to represent and protect the person's interests;

3. The court has determined that a full, reasonable, and comprehensible medical explanation as to the meaning, consequences, and risks of the sterilization operation to be performed and as to alternative methods of contraception has been given by the physician to the person upon whom the operation is to be performed, to the person's guardian, if any, to the person's spouse, if any, and, if there is no spouse, to the parent;

4. The court has determined (i) that the person has been legally adjudged to be incapacitated in accordance with Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 and (ii) that the person is unlikely

to develop mentally to a sufficient degree to make an informed judgment about sterilization in the foreseeable future;

5. The court, to the greatest extent possible, has elicited and taken into account the views of the person concerning the sterilization, giving the views of the person such weight in its decision as the court deems appropriate;

6. The court has complied with the requirements of § 54.1-2977; and

7. The court has entered an order authorizing a qualified physician to perform the operation not earlier than thirty days after the date of the entry of the order, and thirty days have elapsed. The court order shall state the date on and after which the sterilization operation may be performed.

1981, c. 454, § 54-325.11; 1988, c. 765; 1997, c. 921.

§ 54.1-2977. Standards for court-authorized sterilization of certain persons

A. In order for the circuit court to authorize the sterilization of a person in accordance with § 54.1-2975 or § 54.1-2976, it must be proven by clear and convincing evidence that:

1. There is a need for contraception. The court shall find that the person is engaging in sexual activity at the present time or is likely to engage in sexual activity in the near future and that pregnancy would not usually be intended by such person if such person were competent and engaging in sexual activity under similar circumstances;

2. There is no reasonable alternative method of contraception to sterilization;

3. The proposed method of sterilization conforms with standard medical practice, and the treatment can be carried out without unreasonable risk to the life and health of the person; and

4. The nature and extent of the person's mental disability renders the person permanently incapable of caring for and raising a child. The court shall base this finding on empirical evidence and not solely on standardized tests.

B. The criteria set out in subsection A of this section shall be established for the court by independent evidence based on a medical, social, and psychological evaluation of the person upon whom the sterilization operation is to be performed.

1981, c. 454, § 54-325.12; 1988, c. 765.

§ 54.1-2978. Reports of certain sterilizations

The court shall report to the State Registrar of Vital Records the authorization of all sterilizations made in accordance with this article.

1981, c. 454, § 54-325.13; 1988, c. 765.

§ 54.1-2979. No liability for nonnegligent performance of operation

Subject to the rules of law applicable generally to negligence, no physician licensed by the Board of Medicine shall be either civilly or criminally liable by reason of having performed a vasectomy,

salpingectomy, or other surgical sexual sterilization procedure upon any person in this Commonwealth as authorized by this article.

1981, c. 454, § 54-325.14; 1988, c. 765.

§ 54.1-2980. Article inapplicable to certain medical or surgical treatment

No provision in this article shall apply to or be construed so as to prevent, control, or regulate the medical or surgical treatment for sound therapeutic reasons of any person in this Commonwealth by a physician licensed by the Board of Medicine, which treatment may require sexual sterilization or may involve the nullification or destruction of the reproductive functions. For the purposes of this section the sterilization of a person whose health would be endangered by a pregnancy shall be deemed a medical or surgical treatment for sound therapeutic reasons.

1981, c. 454, § 54-325.15; 1988, c. 765.

Article 8 - HEALTH CARE DECISIONS ACT

§ 54.1-2981. Short title

The provisions of this article shall be known and may be cited as the "Health Care Decisions Act."

1983, c. 532, § 54-325.8:1; 1988, c. 765; 1992, cc. 748, 772 .

§ 54.1-2982. Definitions

As used in this article:

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

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

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

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

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

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial

ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting

committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

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

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

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

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

1983, c. 532, § 54-325.8:2; 1984, c. 79; 1988, c. 765; 1991, c. 583; 1992, cc. 412, 748, 772; 1994, c. 956; 1997, c. 609; 1998, cc. 630, 803, 854; 1999, c. 814; 2000, c. 1034; 2005, c. 186; 2007, cc. 92, 907; 2009, cc. 211, 268; 2010, c. 792; 2012, cc. 476, 507.

§ 54.1-2983. Procedure for making advance directive; notice to physician

Any adult capable of making an informed decision may, at any time, make a written advance directive to address any or all forms of health care in the event the declarant is later determined to be incapable of making an informed decision. A written advance directive shall be signed by the declarant in the presence of two subscribing witnesses and may (i) specify the health care the declarant does or does not authorize; (ii) appoint an agent to make health care decisions for the declarant; and (iii) specify an anatomical gift, after the declarant's death, of all of the declarant's body or an organ, tissue or eye donation pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1. A written advance directive may be submitted to the Advance Health Care Directive Registry, pursuant to Article 9 (§ 54.1-2994 et seq.).

Further, any adult capable of making an informed decision who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive (i) directing the specific health care the declarant does or does not authorize in the event the declarant is incapable of making an informed decision, and (ii) appointing an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. An oral advance directive shall be made in the presence of the attending physician and two witnesses.

An advance directive may authorize an agent to take any lawful actions necessary to carry out the declarant's decisions, including, but not limited to, granting releases of liability to medical providers, releasing medical records, and making decisions regarding who may visit the patient.

It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.), it shall be the responsibility of the declarant to provide his attending physician, legal representative, or other person with the information necessary to access the advance directive. In the event the declarant is comatose, incapacitated or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of an advance directive and, if applicable, the fact that it has been submitted to the Advance Health Care Directive Registry. An attending physician who is so notified shall promptly make the advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if oral, a part of the declarant's medical records.

In the event that any portion of an advance directive is invalid or illegal, such invalidity or illegality shall not affect the remaining provisions of the advance directive.

1983, c. 532, § 54-325.8:3; 1988, c. 765; 1992, cc. 748, 772; 1997, c. 801; 2008, cc. 301, 696; 2009, cc. 211, 268; 2010, c. 16.

§ 54.1-2983.1. Participation in health care research

An advance directive may authorize an agent to approve participation by the declarant in any health care study approved by an institutional review board pursuant to applicable federal regulations, or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 that offers the prospect of direct therapeutic benefit to the declarant. An advance directive may also authorize an agent to approve participation by the declarant in any health care study approved by an institutional review board pursuant to applicable federal regulations, or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 that aims to increase scientific understanding of any condition that the declarant may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to the patient.

2009, cc. 211, 268.

§ 54.1-2983.2. Capacity; required determinations

A. Every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision in accordance with this article. A determination that a patient is incapable of making an informed decision may apply to a particular health care decision, to a specified set of health care decisions, or to all health care decisions. No person shall be deemed incapable of making an informed decision based solely on a particular clinical diagnosis.

B. Prior to providing, continuing, withholding, or withdrawing health care pursuant to an authorization that has been obtained or will be sought pursuant to this article and prior to, or as soon as reasonably practicable after initiating health care for which authorization has been obtained or will be sought pursuant to this article, and no less frequently than every 180 days while the need for health care continues, the attending physician shall certify in writing upon personal examination of the patient that the patient is incapable of making an informed decision regarding health care and shall obtain written certification from a capacity reviewer that, based upon a personal examination of the patient, the patient is incapable of making an informed decision. However, certification by a capacity reviewer shall not be required if the patient is unconscious or experiencing a profound impairment of consciousness due to trauma, stroke, or other acute physiological condition. The capacity reviewer providing written certification that a patient is incapable of making an informed decision, if required, shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available. The cost of the assessment shall be considered for all purposes a cost of the patient's health care.

C. If, at any time, a patient is determined to be incapable of making an informed decision, the patient shall be notified, as soon as practical and to the extent he is capable of receiving such notice, that such determination has been made before providing, continuing, withholding, or withdrawing health care as authorized by this article. Such notice shall also be provided, as soon as practical, to the patient's agent or person authorized by § 54.1-2986 to make health care decisions on his behalf.

D. A single physician may, at any time, upon personal evaluation, determine that a patient who has previously been determined to be incapable of making an informed decision is now capable of making an informed decision, provided such determination is set forth in writing.

2009, cc. 211, 268; 2010, c. 792.

§ 54.1-2983.3. Exclusions and limitations of advance directives

A. The absence of an advance directive by an adult patient shall not give rise to any presumption as to his intent to consent to or refuse any particular health care.

B. The provisions of this article shall not apply to authorization of nontherapeutic sterilization, abortion, or psychosurgery.

C. If any provision of a patient's advance directive conflicts with the authority conferred by any emergency custody, temporary detention, involuntary admission, and mandatory outpatient treatment order set forth in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 or by any other provision of law, the provisions of the patient's advance directive that create the conflict shall have no effect. However, a patient's advance directive shall otherwise be given full effect.

D. The provisions of this article, if otherwise applicable, may be used to authorize admission of a patient to a facility, as defined in § 37.2-100, only if the admission is otherwise authorized under Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

2009, cc. 211, 268; 2010, c. 792.

§ 54.1-2984. Suggested form of written advance directives

An advance directive executed pursuant to this article may, but need not, be in the following form:

ADVANCE MEDICAL DIRECTIVE

I, _____, willingly and voluntarily make known my wishes in the event that I am incapable of making an informed decision, as follows:

I understand that my advance directive may include the selection of an agent as well as set forth my choices regarding health care. The term "health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

The phrase "incapable of making an informed decision" means unable to understand the nature, extent and probable consequences of a proposed health care decision or unable to make a rational evaluation of the risks and benefits of a proposed health care decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a capacity reviewer, if certification by a capacity reviewer is required by law, after a personal examination of me and shall be certified in writing. Such certification shall be required before health care is provided, continued, withheld or withdrawn, before any named agent shall be granted authority to make health care decisions on my behalf, and before, or as soon as reasonably practicable after, health care is provided, continued, withheld or withdrawn and every 180 days thereafter while the need for health care continues.

If, at any time, I am determined to be incapable of making an informed decision, I shall be notified, to the extent I am capable of receiving such notice, that such determination has been made before health care is provided, continued, withheld, or withdrawn. Such notice shall also be provided, as soon as practical, to my named agent or person authorized by § 54.1-2986 to make health care decisions on my behalf. If I am later determined to be capable of making an informed decision by a physician, in writing, upon personal examination, any further health care decisions will require my informed consent.

(SELECT ANY OR ALL OF THE OPTIONS BELOW.)

OPTION I: APPOINTMENT OF AGENT (CROSS THROUGH OPTIONS I AND II BELOW IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

I hereby appoint _____ (primary agent), of _____ (address and telephone number), as my agent to make health care decisions on my behalf as authorized in this document. If _____ (primary agent) is not reasonably available or is unable or unwilling to act as my agent, then I appoint _____ (successor agent), of _____ (address and telephone number), to serve in that capacity.

I hereby grant to my agent, named above, full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be incapable of making an informed decision. My agent's authority hereunder is effective as long as I am incapable of making an informed decision.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated in this document or as otherwise known to my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall not make any decision regarding my health care which he knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what health care choice I would have made on my own behalf, then my agent shall make a choice for me based upon what he believes to be in my best interests.

OPTION II: POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT WANT AND ADD ANY LANGUAGE YOU DO WANT.)

The powers of my agent shall include the following:

A. To consent to or refuse or withdraw consent to any type of health care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to consent to the administration of dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or of inadvertently hastening my death;

B. To request, receive, and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;

C. To employ and discharge my health care providers;

D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, assisted living facility or other medical care facility. If I have

authorized admission to a health care facility for treatment of mental illness, that authority is stated elsewhere in this advance directive;

E. To authorize my admission to a health care facility for the treatment of mental illness for no more than 10 calendar days provided I do not protest the admission and a physician on the staff of or designated by the proposed admitting facility examines me and states in writing that I have a mental illness and I am incapable of making an informed decision about my admission, and that I need treatment in the facility; and to authorize my discharge (including transfer to another facility) from the facility;

F. To authorize my admission to a health care facility for the treatment of mental illness for no more than 10 calendar days, even over my protest, if a physician on the staff of or designated by the proposed admitting facility examines me and states in writing that I have a mental illness and I am incapable of making an informed decision about my admission, and that I need treatment in the facility; and to authorize my discharge (including transfer to another facility) from the facility. [My physician or licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I understand the consequences of this provision of my advance directive: _____];

G. To authorize the specific types of health care identified in this advance directive [specify cross-reference to other sections of directive] even over my protest. [My physician or licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I understand the consequences of this provision of my advance directive: _____ _____];

H. To continue to serve as my agent even in the event that I protest the agent's authority after I have been determined to be incapable of making an informed decision;

I. To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law that offers the prospect of direct therapeutic benefit to me;

J. To authorize my participation in any health care study approved by an institutional review board or research review committee pursuant to applicable federal or state law that aims to increase scientific understanding of any condition that I may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to me;

K. To make decisions regarding visitation during any time that I am admitted to any health care facility, consistent with the following directions: _____; and

L. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers. Further, my agent shall not be liable for the costs of health care pursuant to his authorization, based solely on that authorization.

OPTION III: HEALTH CARE INSTRUCTIONS

(CROSS THROUGH PARAGRAPHS A AND/OR B IF YOU DO NOT WANT TO GIVE ADDITIONAL SPECIFIC INSTRUCTIONS ABOUT YOUR HEALTH CARE.)

A. I specifically direct that I receive the following health care if it is medically appropriate under the circumstances as determined by my attending physician: _____.

B. I specifically direct that the following health care not be provided to me under the following circumstances (you may specify that certain health care not be provided under any circumstances): _____.

OPTION IV: END OF LIFE INSTRUCTIONS

(CROSS THROUGH THIS OPTION IF YOU DO NOT WANT TO GIVE INSTRUCTIONS ABOUT YOUR HEALTH CARE IF YOU HAVE A TERMINAL CONDITION.)

If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures - including artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially administered hydration - would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

OPTION: LIFE-PROLONGING PROCEDURES DURING PREGNANCY. (If you wish to provide additional instructions or modifications to instructions you have already given regarding life-prolonging procedures that will apply if you are pregnant at the time your attending physician determines that you have a terminal condition, you may do so here.)

If I am pregnant when my attending physician determines that I have a terminal condition, my decision concerning life-prolonging procedures shall be modified as follows:

_____

_____

_____

_____:

OPTION: OTHER DIRECTIONS ABOUT LIFE-PROLONGING PROCEDURES. (If you wish to provide your own directions, or if you wish to add to the directions you have given above, you may do so here. If you wish to give specific instructions regarding certain life-prolonging procedures, such as artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially administered hydration, this is where you should write them.) I direct that:

_____

_____

_____

_____;

OPTION: My other instructions regarding my care if I have a terminal condition are as follows:

_____

_____

_____

_____;

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this advance directive shall be honored by my family and physician as the final expression of my legal right to refuse health care and acceptance of the consequences of such refusal.

OPTION V: APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT OR ORGAN, TISSUE OR EYE DONATION (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE AN ANATOMICAL GIFT OR ANY ORGAN, TISSUE OR EYE DONATION FOR YOU.)

Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye donations may be made pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and in accordance with my directions, if any. I hereby appoint _____ as my agent, of _____ _____ (address and telephone number), to make any such anatomical gift or organ, tissue or eye donation following my death. I further direct that: _____ (declarant's directions concerning anatomical gift or organ, tissue or eye donation).

This advance directive shall not terminate in the event of my disability.

AFFIRMATION AND RIGHT TO REVOKE: By signing below, I indicate that I am emotionally and mentally capable of making this advance directive and that I understand the purpose and effect of this document. I understand I may revoke all or any part of this document at any time (i) with a signed, dated writing; (ii) by physical cancellation or destruction of this advance directive by myself or by directing someone else to destroy it in my presence; or (iii) by my oral expression of intent to revoke.

_____ _____

(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

(Witness) _____

(Witness) _____

1983, c. 532, § 54-325.8:4; 1988, c. 765; 1989, c. 592; 1991, c. 583; 1992, cc. 748, 772; 1997, c. 609; 1999, c. 814; 2000, c. 810; 2005, c. 186; 2007, cc. 92, 907; 2009, cc. 211, 268; 2010, c. 792; 2015, 109.

§ 54.1-2985. Revocation of an advance directive

A. An advance directive may be revoked at any time by the declarant who is capable of understanding the nature and consequences of his actions (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the advance directive by the declarant or another in his presence and at his direction; or (iii) by oral expression of intent to revoke. A declarant may make a partial revocation of his advance directive, in which case any remaining and nonconflicting provisions of the advance directive shall remain in effect. In the event of the revocation of the designation of an agent, subsequent decisions about health care shall be made consistent with the provisions of this article. Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

B. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.) of this chapter, any revocation of such directive shall also be notarized before being submitted to the Department of Health for removal from the registry. However, failure to notify the Department of Health of the revocation of a document filed with the registry shall not affect the validity of the revocation, as long as it meets the requirements of subsection A.

1983, c. 532, § 54-325.8:5; 1988, c. 765; 1992, cc. 748, 772; 2008, cc. 301, 696; 2009, cc. 211, 268.

§ 54.1-2985.1. Injunction; court-ordered health care

A. On petition of any person to the circuit court of the county or city in which any patient resides or is located for whom health care will be or is currently being provided, continued, withheld, or withdrawn pursuant to this article, the court may enjoin such action upon finding by a preponderance of the evidence that the action is not lawfully authorized by this article or by other state or federal law.

B. Nothing in this article shall limit the ability of any person to petition and obtain a court order for health care, including mental health treatment authorized by Chapter 8 (§ 37.2-800 et seq.) of Title 37.2, of any patient pursuant to any other existing law in the Commonwealth.

2009, cc. 211, 268.

§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions

A. Whenever a patient is determined to be incapable of making an informed decision and (i) has not made an advance directive in accordance with this article or (ii) has made an advance directive

in accordance with this article that does not indicate his wishes with respect to the health care at issue and does not appoint an agent, the attending physician may, upon compliance with the provisions of this section, provide, continue, withhold or withdraw health care upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing and capable person in a higher class:

1. A guardian for the patient. This subdivision shall not be construed to require such appointment in order that a health care decision can be made under this section; or

2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or

3. An adult child of the patient; or

4. A parent of the patient; or

5. An adult brother or sister of the patient; or

6. Any other relative of the patient in the descending order of blood relationship; or

7. Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

If two or more of the persons listed in the same class in subdivisions A 3 through A 7 with equal decision-making priority inform the attending physician that they disagree as to a particular health care decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

B. Regardless of the absence of an advance directive, if the patient has expressed his intent to be an organ donor in any written document, no person noted in this section shall revoke, or in any way hinder, such organ donation.

1983, c. 532, § 54-325.8:6; 1988, c. 765; 1992, cc. 748, 772; 1999, c. 814; 2000, c. 810; 2005, c. 716; 2009, cc. 211, 268; 2010, c. 792.

§ 54.1-2986.1. Duties and authority of agent or person identified in § 54.1-2986

A. If the declarant appoints an agent in an advance directive, that agent shall have (i) the authority to make health care decisions for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision and (ii) decision-making priority over any person identified in § 54.1-2986. In no case shall the agent refuse or fail to honor the declarant's wishes in relation to anatomical gifts or organ, tissue or eye donation. Decisions to restrict visitation of the patient may be made by an agent only if the declarant has expressly included provisions for visitation in his advance directive; such visitation decisions shall be subject to physician orders and policies of the institution to which the declarant is admitted. No person authorized to make decisions for a patient under § 54.1-2986 shall have authority to restrict visitation of the patient.

B. Any agent or person authorized to make health care decisions pursuant to this article shall (i) undertake a good faith effort to ascertain the risks and benefits of, and alternatives to any proposed health care, (ii) make a good faith effort to ascertain the religious values, basic values, and previously expressed preferences of the patient, and (iii) to the extent possible, base his decisions on the beliefs, values, and preferences of the patient, or if they are unknown, on the patient's best interests.

2009, cc. 211, 268.

§ 54.1-2986.2. Health care decisions in the event of patient protest

A. Except as provided in subsection B or C, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing health care if the patient's attending physician knows that such action is protested by the patient.

B. A patient's agent may make a health care decision over the protest of a patient who is incapable of making an informed decision if:

1. The patient's advance directive explicitly authorizes the patient's agent to make the health care decision at issue, even over the patient's later protest, and the patient's attending physician or licensed clinical psychologist attested in writing at the time the advance directive was made that the patient was capable of making an informed decision and understood the consequences of the provision;

2. The decision does not involve withholding or withdrawing life-prolonging procedures; and

3. The health care that is to be provided, continued, withheld or withdrawn is determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law.

C. In cases in which a patient has not explicitly authorized his agent to make the health care decision at issue over the patient's later protest, a patient's agent or person authorized to make decisions pursuant to § 54.1-2986 may make a decision over the protest of a patient who is incapable of making an informed decision if:

1. The decision does not involve withholding or withdrawing life-prolonging procedures;

2. The decision does not involve (i) admission to a facility as defined in § 37.2-100 or (ii) treatment or care that is subject to regulations adopted pursuant to § 37.2-400;

3. The health care decision is based, to the extent known, on the patient's religious beliefs and basic values and on any preferences previously expressed by the patient in an advance directive or otherwise regarding such health care or, if they are unknown, is in the patient's best interests;

4. The health care that is to be provided, continued, withheld, or withdrawn has been determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law; and

5. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and documented as being ethically acceptable by the health care facility's patient care consulting committee, if one exists, or otherwise by two physicians not currently involved in the patient's care or in the determination of the patient's capacity to make health care decisions.

D. A patient's protest shall not revoke the patient's advance directive unless it meets the requirements of § 54.1-2985.

E. If a patient protests the authority of a named agent or any person authorized to make health care decisions by § 54.1-2986, except for the patient's guardian, the protested individual shall have no authority under this article to make health care decisions on his behalf unless the patient's advance directive explicitly confers continuing authority on his agent, even over his later protest. If the protested individual is denied authority under this subsection, authority to make health care decisions shall be determined by any other provisions of the patient's advance directive, or in accordance with § 54.1-2986 or in accordance with any other provision of law.

2009, cc. 211, 268; 2010, c. 792.

§ 54.1-2987. Transfer of patient by physician who refuses to comply with advance directive or health care decision

An attending physician who refuses to comply with (i) a patient's advance directive or (ii) the health care decision of a patient's agent or (iii) the health care decision of an authorized person pursuant to § 54.1-2986 shall make a reasonable effort to transfer the patient to another physician and shall comply with § 54.1-2990.

This section shall apply even if the attending physician determines the health care requested to be medically or ethically inappropriate.

1983, c. 532, § 54-325.8:7; 1988, c. 765; 1992, cc. 748, 772; 2000, cc. 590, 598; 2009, cc. 211, 268.

§ 54.1-2987.1. Durable Do Not Resuscitate Orders

A. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship as defined in the guidelines of the Board of Medicine, and only with the consent of the patient or, if the patient is a minor or is otherwise

incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.

B. If a patient is able to, and does, express to a health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest, such expression shall revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order. In no case shall any person other than the patient have authority to revoke a Durable Do Not Resuscitate Order executed upon the request of and with the consent of the patient himself.

If the patient is a minor or is otherwise incapable of making an informed decision and the Durable Do Not Resuscitate Order was issued upon the request of and with the consent of the person authorized to consent on the patient's behalf, then the expression by said authorized person to a health care provider or practitioner of the desire that the patient be resuscitated shall so revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order.

When a Durable Do Not Resuscitate Order has been revoked as provided in this section, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

C. Durable Do Not Resuscitate Orders issued in accordance with this section shall remain valid and in effect until revoked as provided in subsection B or until rescinded, in accordance with accepted medical practice, by the provider who issued the Durable Do Not Resuscitate Order. In accordance with this section and regulations promulgated by the Board of Health, (i) qualified emergency medical services personnel as defined in § 32.1-111.1; (ii) licensed health care practitioners in any facility, program or organization operated or licensed by the Board of Health, the Department of Social Services, or the Department of Behavioral Health and Developmental Services or operated, licensed or owned by another state agency; and (iii) licensed health care practitioners at any continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 are authorized to follow Durable Do Not Resuscitate Orders that are available to them in a form approved by the Board of Health.

D. The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw health care if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing health care pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

E. For the purposes of this section:

"Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

"Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

F. This section shall not prevent, prohibit or limit a physician from issuing a written order, other than a Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practice.

G. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders issued before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this article.

1992, c. 412; 1994, c. 956; 1998, cc. 564, 628, 630, 803, 854; 1999, c. 814; 2009, cc. 211, 268, 549, 813, 840; 2010, c. 792.

§ 54.1-2988. Immunity from liability; burden of proof; presumption

A health care facility, physician or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of issuing a Durable Do Not Resuscitate Order or the providing, continuing, withholding or the withdrawal of health care under authorization or consent obtained in accordance with this article or as the result of the provision, withholding or withdrawal of ongoing health care in accordance with § 54.1-2990. No person or facility providing, continuing, withholding or withdrawing health care or physician issuing a Durable Do Not Resuscitate Order under authorization or consent obtained pursuant to this article or otherwise in accordance with § 54.1-2990 shall incur liability arising out of a claim to the extent the claim is based on lack of authorization or consent for such action.

Any agent or person identified in § 54.1-2986 who authorizes or consents to the providing, continuing, withholding or withdrawal of health care in accordance with this article shall not be subject, solely on the basis of that authorization or consent, to (i) criminal prosecution or civil liability for such action or (ii) liability for the cost of health care.

No individual serving on a facility's patient care consulting committee as defined in this article and no physician rendering a determination or affirmation in cases in which no patient care consulting committee exists shall be subject to criminal prosecution or civil liability for any act or omission done or made in good faith in the performance of such functions.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the providing, continuing, withholding or withdrawal

of health care, or issuing, consenting to, making or following a Durable Do Not Resuscitate Order in accordance with § 54.1-2987.1 did not, in good faith, comply with the provisions of this article.

The distribution to patients of written advance directives in a form meeting the requirements of § 54.1-2984 and assistance to patients in the completion and execution of such forms by health care providers shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.).

An advance directive or Durable Do Not Resuscitate Order made, consented to or issued in accordance with this article shall be presumed to have been made, consented to, or issued voluntarily and in good faith by an adult who is capable of making an informed decision, physician or person authorized to consent on the patient's behalf.

1983, c. 532, § 54-325.8:8; 1988, c. 765; 1992, cc. 412, 748, 772; 1998, cc. 803, 854; 1999, c. 814; 2000, cc. 590, 598; 2009, cc. 211, 268; 2010, c. 792.

§ 54.1-2989. Willful destruction, concealment, etc., of declaration or revocation; penalties

A. Any person who willfully (i) conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient; (ii) falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another; or (iii) falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another shall be guilty of a Class 1 misdemeanor. If such action causes life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or a Durable Do Not Resuscitate Order, the person committing such action shall be guilty of a Class 6 felony.

B. Any person who willfully (i) conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient, (ii) falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another, (iii) falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another, or (iv) conceals or withholds personal knowledge of the revocation of an advance directive or Durable Do Not Resuscitate Order, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant or a patient, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a Class 2 felony.

1983, c. 532, § 54-325.8:9; 1988, c. 765; 1992, cc. 412, 748, 772; 1998, cc. 803, 854; 1999, c. 814; 2009, cc. 211, 268.

§ 54.1-2989.1. Failure to deliver advance directive

An agent in possession of an advance medical directive vesting any power or authority in him shall, when the instrument is otherwise valid, be deemed to possess the powers and authority granted by such instrument notwithstanding any failure by the declarant to deliver the instrument

to him, and persons dealing with such agent shall have no obligation to inquire into the manner or circumstances by which such possession was acquired; provided, however, that nothing herein shall preclude the court from considering such manner or circumstances as relevant factors in a proceeding brought to remove the agent or revoke the directive.

2003, c. 269.

§ 54.1-2990. Medically unnecessary health care not required; procedure when physician refuses to comply with an advance directive or a designated person's health care decision; mercy killing or euthanasia prohibited

A. Nothing in this article shall be construed to require a physician to prescribe or render health care to a patient that the physician determines to be medically or ethically inappropriate. However, in such a case, if the physician's determination is contrary to the request of the patient, the terms of a patient's advance directive, the decision of an agent or person authorized to make decisions pursuant to § 54.1-2986, or a Durable Do Not Resuscitate Order, the physician shall make a reasonable effort to inform the patient or the patient's agent or person with decision-making authority pursuant to § 54.1-2986 of such determination and the reasons for the determination. If the conflict remains unresolved, the physician shall make a reasonable effort to transfer the patient to another physician who is willing to comply with the request of the patient, the terms of the advance directive, the decision of an agent or person authorized to make decisions pursuant to § 54.1-2986, or a Durable Do Not Resuscitate Order. The physician shall provide the patient or his agent or person with decision-making authority pursuant to § 54.1-2986 a reasonable time of not less than fourteen days to effect such transfer. During this period, the physician shall continue to provide any life-sustaining care to the patient which is reasonably available to such physician, as requested by the patient or his agent or person with decision-making authority pursuant to § 54.1-2986.

B. For purposes of this section, "life-sustaining care" means any ongoing health care that utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, including hydration, nutrition, maintenance medication, and cardiopulmonary resuscitation.

C. Nothing in this section shall require the provision of health care that the physician is physically or legally unable to provide, or health care that the physician is physically or legally unable to provide without thereby denying the same health care to another patient.

D. Nothing in this article shall be construed to condone, authorize or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

1983, c. 532, § 54-325.8:10; 1988, c. 765; 1992, cc. 748, 772; 1999, c. 814; 2000, cc. 590, 598; 2009, cc. 211, 268.

§ 54.1-2991. Effect of declaration; suicide; insurance; declarations executed prior to effective date

The withholding or withdrawal of life-prolonging procedures in accordance with the provisions of this article shall not, for any purpose, constitute a suicide. Nor shall the making of an advance directive pursuant to this article affect the sale, procurement or issuance of any policy of life insurance, nor shall the making of an advance directive or the issuance of a Durable Do Not Resuscitate Order pursuant to this article be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated by the withholding or withdrawal of life-prolonging procedures from an insured patient in accordance with this article, notwithstanding any term of the policy to the contrary. A person shall not be required to make an advance directive or consent to a Durable Do Not Resuscitate order as a condition for being insured for, or receiving, health care services.

The declaration of any patient made prior to July 1, 1983, an advance directive made prior to July 1, 1992, or the issuance, in accordance with the then current law, of a Do Not Resuscitate Order or an Emergency Medical Services Do Not Resuscitate Order prior to July 1, 1999, shall be given effect as provided in this article.

1983, c. 532, § 54-325.8:11; 1988, c. 765; 1992, cc. 412, 748, 772; 1999, c. 814; 2009, cc. 211, 268.

§ 54.1-2992. Preservation of existing rights

The provisions of this article are cumulative with existing law and shall not be construed to modify an individual's right to consent or refuse to consent to medical treatment if he is capable of making an informed decision, or to alter or limit the authority that otherwise exists under the common law, statutes or regulations of the Commonwealth (i) of a health care provider to provide health care; or (ii) of a person's agent, guardian or other legally authorized representative to make decisions on behalf of a person who is incapable of making an informed decision. The provisions of this article shall not impair any existing rights or responsibilities which a health care provider, a patient, including a minor or incapacitated patient, or a patient's family may have in regard to the providing, continuing, withholding or withdrawal of life-prolonging medical procedures under the common law or statutes of the Commonwealth; however, this section shall not be construed to authorize violations of § 54.1-2990.

1983, c. 532, § 54-325.8:12; 1988, c. 765; 1992, cc. 748, 772; 1997, c. 801; 2000, cc. 590, 598; 2009, cc. 211, 268.

§ 54.1-2993. Reciprocity

An advance directive executed in another state shall be deemed to be validly executed for the purposes of this article if executed in compliance with the laws of the Commonwealth of Virginia or the laws of the state where executed. Such advance directives shall be construed in accordance with the laws of the Commonwealth of Virginia.

1992, cc. 748, 772 .

Article 9 - ADVANCE HEALTH CARE DIRECTIVE REGISTRY

§ 54.1-2994. Advance Health Care Directive Registry established

The Department of Health shall make available a secure online central registry for advance health care directives.

2008, cc. 301, 696.

§ 54.1-2995. Filing of documents with the registry; regulations; fees

A. A person may submit any of the following documents and the revocations of these documents to the Department of Health for filing in the Advance Health Care Directive Registry established pursuant to this article:

1. A health care power of attorney.

2. An advance directive created pursuant to Article 8 (§ 54.1-2981 et seq.) or a subsequent act of the General Assembly.

3. A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.).

B. The document may be submitted for filing only by the person who executed the document or his legal representative or designee and shall be accompanied by any fee required by the Department of Health.

C. All data and information contained in the registry shall remain confidential and shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. The Board of Health shall promulgate regulations to carry out the provisions of this article, which shall include, but not be limited to (i) a determination of who may access the registry, including physicians, other licensed health care providers, the declarant, and his legal representative or designee; (ii) a means of annually reminding registry users of which documents they have registered; and (iii) fees for filing a document with the registry. Such fees shall not exceed the direct costs associated with development and maintenance of the registry and with the education of the public about the availability of the registry, and shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. No fee shall be charged for the filing of a document revoking any document previously filed with the registry.

2008, cc. 301, 696; 2010, c. 16; 2014, c. 715.

§ 54.1-2996. Validity of unregistered documents

Failure to register a document with the registry maintained by the Department of Health pursuant to this article shall not affect the document's validity. Failure to notify the Department of Health of the revocation of a document filed with the registry shall not affect the validity of a revocation that meets the statutory requirements for the revocation to be valid.

2008, cc. 301, 696.

Chapter 30 - NURSING

Article 1 - BOARD OF NURSING

§ 54.1-3000. Definitions

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

"Advanced practice registered nurse" means a registered nurse who has completed an advanced graduate-level education program in a specialty category of nursing and has passed a national certifying examination for that specialty.

"Board" means the Board of Nursing.

"Certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the Board.

"Clinical nurse specialist" means an advanced practice registered nurse who meets the requirements set forth in § 54.1-3018.1 and who is currently registered by the Board. Such a person shall be recognized as being able to provide advanced services according to the specialized training received from a program satisfactory to the Board, but shall not be entitled to perform any act that is not within the scope of practice of professional nursing.

"Massage therapist" means a person who meets the qualifications specified in this chapter and who is currently licensed by the Board.

"Massage therapy" means the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. The term "massage therapy" does not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, midwifery, chiropractic, physical therapy, occupational therapy, acupuncture, athletic training, or podiatry is required by law or any service described in § 54.1-3001 (18).

"Massage therapy" shall not include manipulation of the spine or joints.

"Nurse practitioner" means an advanced practice registered nurse who is jointly licensed by the Boards of Medicine and Nursing pursuant to § 54.1-2957.

"Practical nurse" or "licensed practical nurse" means a person who is licensed or holds a multistate licensure privilege under the provisions of this chapter to practice practical nursing as defined in this section. Such a licensee shall be empowered to provide nursing services without compensation. The abbreviation "L.P.N." shall stand for such terms.

"Practical nursing" or "licensed practical nursing" means the performance for compensation of selected nursing acts in the care of individuals or groups who are ill, injured, or experiencing changes in normal health processes; in the maintenance of health; in the prevention of illness or disease; or, subject to such regulations as the Board may promulgate, in the teaching of those who

are or will be nurse aides. Practical nursing or licensed practical nursing requires knowledge, judgment and skill in nursing procedures gained through prescribed education. Practical nursing or licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a professional nurse, registered nurse or registered professional nurse or other licensed health professional authorized by regulations of the Board.

"Practice of a nurse aide" or "nurse aide practice" means the performance of services requiring the education, training, and skills specified in this chapter for certification as a nurse aide. Such services are performed under the supervision of a dentist, physician, podiatrist, professional nurse, licensed practical nurse, or other licensed health care professional acting within the scope of the requirements of his profession.

"Professional nurse, ""registered nurse" or "registered professional nurse" means a person who is licensed or holds a multistate licensure privilege under the provisions of this chapter to practice professional nursing as defined in this section. Such a licensee shall be empowered to provide professional services without compensation, to promote health and to teach health to individuals and groups. The abbreviation "R.N." shall stand for such terms.

"Professional nursing, ""registered nursing" or "registered professional nursing" means the performance for compensation of any nursing acts in the observation, care and counsel of individuals or groups who are ill, injured or experiencing changes in normal health processes or the maintenance of health; in the prevention of illness or disease; in the supervision and teaching of those who are or will be involved in nursing care; in the delegation of selected nursing tasks and procedures to appropriately trained unlicensed persons as determined by the Board; or in the administration of medications and treatments as prescribed by any person authorized by law to prescribe such medications and treatment. Professional nursing, registered nursing and registered professional nursing require specialized education, judgment, and skill based upon knowledge and application of principles from the biological, physical, social, behavioral and nursing sciences.

Code 1950, § 54-326; 1970, c. 116, § 54-367.2; 1988, cc. 580, 765; 1989, cc. 7, 278; 1990, c. 104; 1996, c. 166; 1998, c. 458; 2004, c. 49; 2012, c. 213; 2016, cc. 83, 93, 324.

§ 54.1-3001. Exemptions

This chapter shall not apply to the following:

1. The furnishing of nursing assistance in an emergency;

2. The practice of nursing, which is prescribed as part of a study program, by nursing students enrolled in nursing education programs approved by the Board or by graduates of approved nursing education programs for a period not to exceed ninety days following successful completion of the nursing education program pending the results of the licensing examination, provided proper application and fee for licensure have been submitted to the Board and unless the graduate fails the licensing examination within the 90-day period;

3. The practice of any legally qualified nurse of another state who is employed by the United States government while in the discharge of his official duties;

4. The practice of nursing by a nurse who holds a current unrestricted license in another state, the District of Columbia, a United States possession or territory, or who holds a current unrestricted license in Canada and whose training was obtained in a nursing school in Canada where English was the primary language, for a period of 30 days pending licensure in Virginia, if the nurse, upon employment, has furnished the employer satisfactory evidence of current licensure and submits proper application and fees to the Board for licensure before, or within 10 days after, employment. At the discretion of the Board, additional time may be allowed for nurses currently licensed in another state, the District of Columbia, a United States possession or territory, or Canada who are in the process of attaining the qualification for licensure in this Commonwealth;

5. The practice of nursing by any registered nurse who holds a current unrestricted license in another state, the District of Columbia, or a United States possession or territory, or a nurse who holds an equivalent credential in a foreign country, while enrolled in an advanced professional nursing program requiring clinical practice. This exemption extends only to clinical practice required by the curriculum;

6. The practice of nursing by any nurse who holds a current unrestricted license in another state, the District of Columbia, or a United States possession or territory and is employed to provide care to any private individual while such private individual is traveling through or temporarily staying, as defined in the Board's regulations, in the Commonwealth;

7. General care of the sick by nursing assistants, companions or domestic servants that does not constitute the practice of nursing as defined in this chapter;

8. The care of the sick when done solely in connection with the practice of religious beliefs by the adherents and which is not held out to the public to be licensed practical or professional nursing;

9. Any employee of a school board, authorized by a prescriber and trained in the administration of insulin and glucagon, when, upon the authorization of a prescriber and the written request of the parents as defined in § 22.1-1, assisting with the administration of insulin or administrating glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia;

10. The practice of nursing by any nurse who is a graduate of a foreign nursing school and has met the credential, language, and academic testing requirements of the Commission on Graduates of Foreign Nursing Schools for a period not to exceed ninety days from the date of approval of an application submitted to the Board when such nurse is working as a nonsupervisory staff nurse in a licensed nursing home or certified nursing facility. During such ninety-day period, such nurse shall take and pass the licensing examination to remain eligible to practice nursing in Virginia; no exemption granted under this subdivision shall be extended;

11. The practice of nursing by any nurse rendering free health care to an underserved population in Virginia who (i) does not regularly practice nursing in Virginia, (ii) holds a current valid license or certification to practice nursing in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of the license or certification issued in such other jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any nurse whose license or certificate has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow a nurse who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state;

12. Any person performing state or federally funded health care tasks directed by the consumer, which are typically self-performed, for an individual who lives in a private residence and who, by reason of disability, is unable to perform such tasks but who is capable of directing the appropriate performance of such tasks;

13. The practice of nursing by any nurse who holds a current unrestricted license from another state, the District of Columbia or a United States possession or territory, while such nurse is in the Commonwealth temporarily and is practicing nursing in a summer camp or in conjunction with clients who are participating in specified recreational or educational activities;

14. The practice of massage therapy that is an integral part of a program of study by a student enrolled in a massage therapy educational program under the direction of a licensed massage therapist. Any student enrolled in a massage therapy educational program shall be identified as a "Student Massage Therapist" and shall deliver massage therapy under the supervision of an appropriate clinical instructor recognized by the educational program;

15. The practice of massage therapy by a massage therapist licensed or certified in good standing in another state, the District of Columbia, or another country, while such massage therapist is volunteering at a sporting or recreational event or activity, is responding to a disaster or emergency declared by the appropriate authority, is travelling with an out-of-state athletic team or an athlete for the duration of the athletic tournament, game, or event in which the team or athlete is competing, or is engaged in educational seminars;

16. Any person providing services related to the domestic care of any family member or household member so long as that person does not offer, hold out, or claim to be a massage therapist;

17. Any health care professional licensed or certified under this title for which massage therapy is a component of his practice; or

18. Any individual who provides stroking of the hands, feet, or ears or the use of touch, words, and directed movement, including healing touch, therapeutic touch, mind-body centering, ortho-bionomy, traeger therapy, reflexology, polarity therapy, reiki, qigong, muscle activation techniques, or practices with the primary purpose of affecting energy systems of the human body.

Code 1950, § 54-362; 1970, c. 116; 1982, c. 598, § 54-367.36; 1988, c. 765; 1994, cc. 58, 103; 1996, c. 388; 1999, c. 570; 2001, cc. 244, 251; 2002, cc. 713, 740; 2008, c. 674; 2010, c. 245; 2012, cc. 117, 178; 2016, c. 324.

§ 54.1-3002. Board of Nursing; membership; terms; meetings; quorum; administrative officer

The Board of Nursing shall consist of 14 members as follows: eight registered nurses, at least two of whom are licensed nurse practitioners; three licensed practical nurses; and three citizen members. The terms of office of the Board shall be four years.

The Board shall meet each January and shall elect from its membership a president, a vice-president, and a secretary. It may hold such other meetings as may be necessary to perform its duties. A majority of the Board including one of its officers shall constitute a quorum for the conduct of business at any meeting. Special meetings of the Board shall be called by the administrative officer upon written request of two members.

The Board shall have an administrative officer who shall be a registered nurse.

Code 1950, §§ 54-327, 54-328, 54-336, 54-341, 54-342; 1960, c. 61; 1968, c. 337, § 54-367.12; 1970, c. 116, § 54-367.10; 1975, c. 106, §§ 54-367.3, 54-367.4; 1979, c. 5; 1980, c. 728; 1982, c. 598; 1986, c. 464; 1988, c. 765; 1993, c. 404; 2008, c. 34; 2016, c. 105.

§ 54.1-3003. Qualifications of members

A. Each professional nurse appointed to the Board shall:

1. Be a citizen of the United States of America;

2. Be a resident of this Commonwealth;

3. Have been graduated from an educational program approved by a state board of nursing;

4. Be licensed in this Commonwealth as a registered nurse;

5. Have had at least five years' experience in nursing, nursing administration or teaching in a nursing education program; and

6. Have been actively engaged in professional nursing in this Commonwealth for at least three years preceding appointment or reappointment.

B. Each licensed practical nurse appointed to the Board shall:

1. Be a citizen of the United States of America;

2. Be a resident of this Commonwealth;

3. Have been graduated from a high school or the equivalent;

4. Have been graduated from a practical nursing program approved by a state board of nursing;

5. Be licensed in this Commonwealth as a practical nurse;

6. Have had at least five years' experience in nursing; and

7. Have been actively engaged in practical nursing in this Commonwealth for at least three years preceding appointment or reappointment.

Code 1950, § 54-333; 1970, c. 116; 1985, c. 305, § 54-367.9; 1988, c. 765.

§ 54.1-3004. Nominations

Nominations may be made for each professional vacancy from lists of three names, submitted to the Governor by incorporated nurses associations. 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.

1986, c. 464, § 54-367.4:1; 1988, c. 765.

§ 54.1-3005. Specific powers and duties of Board

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:

1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure or certification under this chapter;

2. To approve programs that meet the requirements of this chapter and of the Board;

3. To provide consultation service for educational programs as requested;

4. To provide for periodic surveys of educational programs;

5. To deny or withdraw approval from educational programs for failure to meet prescribed standards;

6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;

7. To keep a record of all its proceedings;

8. To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with § 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee

pursuant to § 54.1-2401 for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;

9. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;

10. To license and maintain a registry of all licensed massage therapists and to promulgate regulations governing the criteria for licensure as a massage therapist and the standards of professional conduct for licensed massage therapists;

11. To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;

12. To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication;

13. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation;

14. To collect, store and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1;

15. To expedite application processing, to the extent possible, for an applicant for licensure or certification by the Board upon submission of evidence that the applicant, who is licensed or certified in another state, is relocating to the Commonwealth pursuant to a spouse's official military orders;

16. To register medication aides and promulgate regulations governing the criteria for such registration and standards of conduct for medication aides;

17. To approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation;

18. To set guidelines for the collection of data by all approved nursing education programs and to compile this data in an annual report. The data shall include but not be limited to enrollment, graduation rate, attrition rate, and number of qualified applicants who are denied admission;

19. To develop, in consultation with the Board of Pharmacy, guidelines for the training of employees of child day programs as defined in § 63.2-100 and regulated by the State Board of Social Services in the administration of prescription drugs as defined in the Drug Control Act (§ 54.1-3400

et seq.). Such training programs shall be taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist;

20. In order to protect the privacy and security of health professionals licensed, registered or certified under this chapter, to promulgate regulations permitting use on identification badges of first name and first letter only of last name and appropriate title when practicing in hospital emergency departments, in psychiatric and mental health units and programs, or in health care facility units offering treatment for patients in custody of state or local law-enforcement agencies;

21. To revise, as may be necessary, guidelines for seizure management, in coordination with the Board of Medicine, including the list of rescue medications for students with epilepsy and other seizure disorders in the public schools. The revised guidelines shall be finalized and made available to the Board of Education by August 1, 2010. The guidelines shall then be posted on the Department of Education's website; and

22. To promulgate, together with the Board of Medicine, regulations governing the licensure of nurse practitioners pursuant to § 54.1-2957.

Code 1950, §§ 54-339, 54-343; 1970, c. 116; 1979, c. 5, § 54-367.11; 1982, c. 598; 1984, c. 734; 1988, c. 765; 1989, cc. 7, 278; 1990, c. 104; 1994, c. 778; 1996, c. 166; 1998, c. 458; 1999, cc. 570, 637; 2000, cc. 587, 701; 2004, c. 49; 2005, cc. 54, 610, 924; 2006, cc. 190, 686; 2009, c. 687; 2010, c. 188; 2012, cc. 213, 803, 835; 2016, cc. 83, 324.

§ 54.1-3005.1. Criminal history background checks

The Board shall require each applicant for licensure as a practical nurse, registered nurse, or licensed massage therapist to submit fingerprints and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant. The cost of fingerprinting and the criminal history record search shall be paid by the applicant.

The Central Criminal Records Exchange shall forward the results of the state and federal criminal history record search to the Board, which shall be a governmental entity. If an applicant is denied licensure because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation and the Central Criminal Records Exchange. The information shall not be disseminated except as provided in this section.

2015, c. 307; 2016, c. 324.

§ 54.1-3006. Advisory committees

The Board may appoint advisory committees consisting of three persons or more who are knowledgeable in the area of practice or education under consideration. Members of advisory com-

mittees shall not receive compensation, but shall receive reimbursement for travel and other actual and necessary expenses incurred in the performance of their duties.

Code 1950, §§ 54-339, 54-343; 1970, c. 116; 1979, c. 5, § 54-367.11; 1982, c. 598; 1984, c. 734; 1988, c. 765.

§ 54.1-3006.1. Public school nursing education programs

The Board of Education and the Board of Nursing, or their representatives, shall, at least annually, develop and revise as necessary an interagency agreement relating to the regulation of public school nursing education programs. This memorandum of understanding shall establish a framework for cooperation in order to achieve consistency in the regulation of such programs. The duties and responsibilities of the Department of Education and the Board of Nursing for public school practical nursing and nurse aide education programs shall be set forth in the agreement. The agreement shall include, but need not be limited to, core curricula for the programs; administrative and clerical activities such as exchange of mailing labels, participation in site visits, reporting requirements, and information for newsletters; review and revision of the curricula materials; participation in inservice activities and state conferences; opportunity to participate in and comment on revisions of any relevant regulations; and communication procedures between the two state agencies and with the local school divisions. The Director shall rely on the Board of Nursing for advice on and implementation of the agreement.

1991, c. 629 .

§ 54.1-3006.2. Nurse aide education program

All approved nurse aide education programs shall provide each student applying to or enrolled in such program with a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities, and a list of crimes which pose a barrier to such employment.

1999, c. 637.

§ 54.1-3007. Refusal, revocation or suspension, censure or probation

The Board may refuse to admit a candidate to any examination, refuse to issue a license, certificate, or registration to any applicant and may suspend any license, certificate, registration, or multistate licensure privilege for a stated period or indefinitely, or revoke any license, certificate, registration, or multistate licensure privilege, or censure or reprimand any licensee, certificate holder, registrant, or multistate licensure privilege holder, or place him on probation for such time as it may designate for any of the following causes:

1. Fraud or deceit in procuring or attempting to procure a license, certificate, or registration;

2. Unprofessional conduct;

3. Willful or repeated violation of any of the provisions of this chapter;

4. Conviction of any felony or any misdemeanor involving moral turpitude;

5. Practicing in a manner contrary to the standards of ethics or in such a manner as to make his practice a danger to the health and welfare of patients or to the public;

6. Use of alcohol or drugs to the extent that such use renders him unsafe to practice, or any mental or physical illness rendering him unsafe to practice;

7. The denial, revocation, suspension or restriction of a license, certificate, registration, or multistate licensure privilege to practice in another state, the District of Columbia or a United States possession or territory; or

8. Abuse, negligent practice, or misappropriation of a patient's or resident's property.

Code 1950, § 54-353; 1970, c. 116; 1979, c. 5, § 54-367.32; 1982, c. 598; 1988, c. 765; 1989, c. 278; 2003, c. 249; 2005, cc. 610, 924.

§ 54.1-3008. Particular violations; prosecution

A. It shall be a Class 1 misdemeanor for any person to:

1. Practice nursing under the authority of a license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

2. Practice nursing unless licensed to do so under the provisions of this chapter;

3. Knowingly employ an unlicensed person as a professional or practical nurse or knowingly permit an unlicensed person to represent himself as a professional or practical nurse;

4. Use in connection with his name any designation tending to imply that he is a professional nurse or a practical nurse unless duly licensed to practice under the provisions of this chapter;

5. Practice professional nursing or practical nursing during the time his license is suspended or revoked;

6. Conduct a nursing education program for the preparation of professional or practical nurses unless the program has been approved by the Board; or

7. Engage in the practice of massage therapy or hold himself out as practicing massage therapy unless he holds a license as a massage therapist issued by the Board.

B. The provisions of this section shall apply, mutatis mutandis, to persons holding a multistate licensure privilege to practice nursing.

Code 1950, § 54-359; 1970, c. 116; 1982, c. 598, § 54-367.35; 1988, c. 765; 1996, c. 166; 2004, c. 49; 2016, c. 324.

§§ 54.1-3009, 54.1-3010. Repealed

Repealed by Acts 2004, c. 64.

§ 54.1-3011. Renewal of licenses; lapsed licenses; reinstatement; penalties

A. Every license issued under the provisions of this chapter shall be renewed biennially by such time as the Board may prescribe by regulation. The Board shall mail an application for renewal to

every licensee, but the failure to receive such application shall not excuse any licensee from the requirements for renewal. The person receiving such application shall furnish the requested information and return the form to the Board with the renewal fee.

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

C. Any person practicing nursing during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter.

Code 1950, § 54-352; 1956, c. 48; 1970, c. 116, § 54-367.25; 1974, c. 194; 1979, c. 5; 1982, c. 598; 1988, c. 765.

§ 54.1-3011.01. Restricted volunteer license for registered or practical nurses

A. The Board may issue a restricted volunteer license to a registered or practical nurse who, within the past five years, held an unrestricted active license as a registered or practical nurse issued by the Board or another state, which was in good standing at the time the license expired or became inactive. Nurses holding a restricted volunteer license issued pursuant to this section shall only practice in public health or community free clinics that provide services to underserved populations.

B. An applicant for a restricted volunteer license shall submit an application on a form provided by the Board and attest that he will not receive remuneration directly or indirectly for providing nursing services.

C. A person holding a restricted volunteer license pursuant to this section shall not be required to complete continuing competency requirements for the first renewal of such license. For subsequent renewals, a nurse holding a restricted volunteer license shall be required to complete the continuing competency requirements required for renewal of an active license.

D. A restricted volunteer license issued pursuant to this section may be renewed biennially in accordance with the renewal schedule established in regulations promulgated by the Board.

E. The application and biennial renewal fee for restricted volunteer licenses pursuant to this section shall be one-half of the fee for an active license.

F. A nurse holding a restricted volunteer license issued pursuant to this section shall be subject to the provisions of this chapter and all regulations applicable to nurses practicing in the Commonwealth.

G. A restricted volunteer license shall only be valid in the Commonwealth and shall not confer any multistate licensure privilege.

2015, c. 522.

§ 54.1-3011.1. Additional fee required for licensure of certain practitioners

In addition to the fees authorized for licensure and renewal by § 54.1-2400, the Board is authorized to charge a fee not to exceed one dollar for the licensure of every practical nurse and registered nurse to be deposited in the Nursing Scholarship and Loan Repayment Fund established pursuant to § 54.1-3011.2. Such fees shall be used to fund scholarships established pursuant to subsection A of § 32.1-122.6:01.

1991, c. 669; 2000, cc. 240, 254.

§ 54.1-3011.2. Nursing Scholarship and Loan Repayment Fund

A. There is hereby established the Nursing Scholarship and Loan Repayment Fund for the purpose of financing scholarships for (i) part-time and full-time students enrolled in or accepted for enrollment by nursing programs which will prepare such students, upon completion, for examination to be licensed by the Board as practical nurses or registered nurses and (ii) those registered nurses, licensed practical nurses, and certified nurse aides who agree to perform a period of nursing service in a Commonwealth long-term care facility pursuant to regulations promulgated by the Board of Health in cooperation with the Board.

B. The Fund shall be administered by the Board, in cooperation with the Director of the Department, and the scholarships shall be administered and awarded by the Board of Health pursuant to § 32.1-122.6:01. The Fund shall be maintained and administered separately from any other program or funds of the Board and the Department of Health Professions. No portion of the Fund shall be used for a purpose other than that described in this section and § 32.1-122.6:01. Any money remaining in the Fund at the end of a biennium, including amounts repaid by award recipients, and any interest thereon, shall not revert to the general fund or the funds of the Department of Health Professions, but shall remain in the Fund to be used only for the purposes of this section. In addition to any licensure fees that may be collected pursuant to § 54.1-3011.1, the Fund shall also include:

1. Any funds appropriated by the General Assembly for the purposes of the Fund; and

2. Any gifts, grants, or bequests received from any private person or organization.

Upon receiving the names of the scholarship and loan repayment program recipients from the Board of Health, the Board of Nursing shall be responsible for transmitting the funds to the appropriate institution to be credited to the account of the recipient.

1991, c. 669; 2000, cc. 240, 254; 2001, c. 188; 2002, c. 290.

§ 54.1-3012. Additional power of the Board

In addition to other powers enumerated in this title, the Board may take those steps necessary to obtain recognition by the United States Secretary of Education as a reliable authority concerning the quality of education offered by educational institutions or programs in the area of practical nursing.

1986, c. 13, § 54-367.11:1; 1988, c. 765.

§ 54.1-3012.1. Nursing workforce information

A. With such funds as are appropriated for this purpose, and consistent with the provisions of § 54.1-2506.1, the Board shall collect, store, and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered under the provisions of this chapter. In addition to appropriated funds, the Board may also accept donations or grants from private sources in addition to any licensure or certification fee to any certified, licensed or registered nurse to carry out the provisions of this section. The information to be collected on nurses shall include, but not be limited to: (i) demographic data; (ii) level of education; (iii) employment status; (iv) employment setting such as in a hospital, physician's office, or nursing home; (v) geographic location of employment; (vi) type of nursing position or area of specialty; and (vii) number of hours worked per week. Such information shall be collected and updated biennially, and shall be published, in aggregate form and in a format accessible to the public, on the Department of Health Professions website. However, the Board may release information that identifies specific individuals for the purpose of determining shortage designations and to qualified personnel if pertinent to an investigation, research, or study, provided a written agreement between such qualified personnel and the Department, which ensures that any person to whom such identities are divulged shall preserve the confidentiality of such identities, is executed.

B. The Board shall promulgate regulations to implement the provisions of this section. Such regulations shall include: (i) the specific number and types of nursing workforce data elements to be collected; (ii) the process by which the information is collected, stored, and made available to interested parties; (iii) provisions to ensure the confidentiality of the data to be collected and to protect the identity of all individuals submitting information; and (iv) other provisions as determined by the Board.

2000, cc. 587, 701; 2002, c. 333; 2008, c. 373; 2009, c. 382.

§ 54.1-3013. Approval of nursing education program

An institution desiring to conduct a nursing education program to prepare professional or practical nurses shall apply to the Board and submit evidence that:

1. It is prepared to meet the minimum standards prescribed by the Board for either a professional nursing curriculum or a practical nursing curriculum; and

2. It is prepared to meet such other standards as may be established by law or by the Board.

A survey of the institution and its entire nursing education program shall be made by the administrative officer or other authorized employee of the Board, who shall submit a written report of the survey to the Board. If, in the opinion of the Board, the requirements necessary for approval are met, it shall be approved as a nursing education program for professional or practical nurses.

New nursing education programs shall not be established or conducted unless approved by the Board.

Code 1950, §§ 54-355, 54-357; 1970, c. 116, §§ 54-367.27, 54-367.29; 1988, c. 765; 1989, c. 7; 2016, c. 83.

§ 54.1-3013.1. Nursing education programs to include child abuse recognition and intervention

In the exercise of its authority to establish minimum standards for professional nursing curricula and practical nursing curricula, the Board of Nursing, on and after July 1, 2007, shall require that approved nursing education programs provide instruction in child abuse recognition and intervention.

2006, c. 528.

§ 54.1-3014. Survey of nursing education programs; discontinuance of program; due process requirements

A. The Board shall, through its administrative officer or other authorized representative, survey all nursing education programs in the Commonwealth as necessary. Written reports of such surveys shall be submitted to the Board. If the Board determines that any approved nursing education program is not maintaining the required standards, notice in writing specifying the deficiencies shall be immediately given to the institution conducting the program.

B. Following an informal fact-finding proceeding held pursuant to § 2.2-4019, at which the Board places a program on conditional approval with terms and conditions that include a restriction on enrollment in a nursing education program:

1. The Board shall state in its order or decision letter the specific violations of law or regulation and the factual basis for each violation with sufficient specificity to inform the program of the basis for the decision so that the nursing education program may take corrective steps to address any identified violations.

2. A program subject to any term or condition set forth in an order or decision letter entered by the Board that constitutes a restriction on enrollment for a nursing education program shall have 30 days from the entry of the Board's order or decision letter to request a formal hearing pursuant to § 2.2-4020, and any term or condition restricting enrollment shall be stayed upon receipt of such request within 30 days from the Board's entry of its order or the decision letter. If a nursing education program does not request a formal hearing as provided in this section within 30 days of the entry of the Board's order or decision letter, the term or condition that constitutes a restriction on enrollment in a nursing education program shall be effective immediately.

3. Following a formal hearing held pursuant to § 2.2-4020, the order or decision letter of the Board shall identify the factual basis of any finding that the nursing education program's information presented at the formal hearing was insufficient to demonstrate compliance with the law or regulations of the Board.

4. If an order of the Board entered following a formal hearing held pursuant to § 2.2-4020 provides that the program is to continue on conditional approval with terms or conditions

involving a restriction on enrollment, the program shall be advised of the right to appeal the order or decision letter to the appropriate circuit court in accordance with § 2.2-4026 and Part 2A of the Rules of the Supreme Court of Virginia.

5. Any restriction on enrollment shall be limited to one year.

Following the expiration of the restriction on enrollment, if the Board determines that the specific violations that led to the restriction on enrollment have not been remedied, it shall provide the nursing education program with written notice pursuant to § 2.2-4019 to appear for an informal fact-finding proceeding with an opportunity to present evidence of compliance before the Board.

C. A program that fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which such facts are established.

D. The Board shall provide to a nursing education program any written complaint or written summary of a verbal complaint related to the program when any administrative request for information is initiated or subpoena issued.

E. In addition to the program director, a nursing education program may designate one or more persons with whom the Board shall communicate for purposes of providing official notices, obtaining information, and responding to requests for information regarding the nursing education program; such persons need not be licensed nurses and need not maintain their primary place of business at the same address as the nursing education program.

Code 1950, § 54-358; 1970, c. 116, § 54-367.28; 1988, c. 765; 2012, c. 644.

§ 54.1-3015. Continuance of license of certified tuberculosis nurse

Any person licensed as a certified tuberculosis nurse to perform duties as prescribed by the State Board of Examiners of Nurses, now known as the Board of Nursing, on July 1, 1970, shall continue to be so licensed unless his license is suspended or revoked in accordance with the provisions of this chapter.

1970, c. 116, § 54-367.30; 1982, c. 598; 1988, c. 765.

Article 2 - LICENSURE OF REGISTERED NURSES

§ 54.1-3016. Use of title "registered nurse" or "R.N."

Any person who holds a license or a multistate licensure privilege to practice professional nursing in Virginia shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall assume such title or use such abbreviation or any other words, letters, signs or devices to indicate that the person using the same is a registered nurse.

1970, c. 116, § 54-367.17; 1988, c. 765; 2004, c. 49.

§ 54.1-3016.1. Correctional health assistants

Licensed practical nurses, registered nurses, and nurse practitioners may practice as correctional health assistants pursuant to § 54.1-2901.

1997, c. 720.

§ 54.1-3017. Qualifications of applicant for registered nurse's license; examination; graduates of foreign nursing education programs

A. An applicant for a license to practice professional nursing shall submit evidence satisfactory to the Board that such applicant:

1. Has completed an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency;

2. Has received a diploma or degree from an approved professional nursing education program;

3. Has passed a written examination as required by the Board; and

4. Has committed no acts which are grounds for disciplinary action as set forth in this chapter.

B. The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as a registered nurse during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure.

C. An applicant who graduated from a nursing education program in a foreign country may be required to pass the Commission on Graduates of Foreign Nursing Schools Qualifying Examination prior to admission to the examination for licensure in the Commonwealth.

Code 1950, § 54-346; 1970, c. 116; 1979, c. 5, § 54-367.13; 1982, c. 598; 1988, c. 765; 2011, c. 390.

§ 54.1-3017.1. Registered nurse provisional license

The Board may issue a provisional license to an applicant for licensure as a registered nurse who has met the educational and examination requirements for licensure, in order to allow the applicant to obtain clinical experience, as specified by the Board in regulation. A person practicing under a provisional license shall only practice under the supervision of a licensed registered nurse, in accordance with regulations established by the Board.

2011, c. 712.

§ 54.1-3018. Registered nurse's license by endorsement

A. The Board may issue a license by endorsement to an applicant to practice professional nursing if the applicant has been licensed as a professional or registered nurse under the laws of another state, the District of Columbia, or a United States possession or territory, and, in the opinion of the Board, the applicant meets the qualifications required of registered nurses in this Commonwealth.

B. The Board shall also endorse for licensure nurses who hold an unrestricted license in Canada and whose training was obtained in a nursing school in Canada where English was the primary language and who have passed the Canadian Registered Nurses Examination (CRNE).

Code 1950, § 54-350; 1970, c. 116; 1982, c. 598, § 54-367.14; 1988, c. 765; 2002, c. 713.

§ 54.1-3018.1. Registration of clinical nurse specialists

The Board may register an applicant as a clinical nurse specialist if the applicant:

1. Holds a valid license to practice professional nursing pursuant to this article; and

2. Has successfully completed a graduate-level clinical nurse specialist program within a regionally accredited college or university that meets all educational qualifications and standards established by national certification guidelines and holds a national clinical nurse specialist certification that prepares the professional nurse to deliver advanced nursing services.

2016, c. 83.

Article 3 - LICENSURE OF PRACTICAL NURSES

§ 54.1-3019. Use of title "licensed practical nurse" or "L.P.N."

Any person who holds a license or a multistate licensure privilege to practice as a licensed practical nurse in Virginia shall have the right to use the title "Licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume such title or use such abbreviation or any other words, letters, signs or devices to indicate that the person using the same is a licensed practical nurse.

1970, c. 116, § 54-367.23; 1988, c. 765; 2004, c. 49.

§ 54.1-3020. Qualifications of applicant for practical nurse's license

A. An applicant for a license to practice as a practical nurse shall furnish evidence satisfactory to the Board that the applicant:

1. Has completed two years of high school or its equivalent;

2. Has received a diploma from an approved practical nursing program;

3. Has passed a written examination as required by the Board; and

4. Has committed no acts which are grounds for disciplinary action as set forth in this chapter.

B. The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as a practical nurse during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure.

Code 1950, § 54-348; 1970, c. 116; 1979, c. 5, § 54-367.19; 1982, c. 598; 1988, c. 765; 2011, c. 390.

§ 54.1-3021. Practical nurse's license by endorsement

The Board may issue a license by endorsement to any applicant to practice as a licensed practical nurse if the applicant has been licensed as a practical nurse or a person entitled to perform similar services under laws of another state, the District of Columbia or a United States possession or

territory and, in the opinion of the Board, the applicant meets the requirements for licensed practical nurses in this Commonwealth.

Code 1950, § 54-351; 1970, c. 116; 1982, c. 598, § 54-367.20; 1988, c. 765.

Article 4 - CERTIFICATION OF NURSE AIDES

§ 54.1-3022. Use of the title "Certified Nurse Aide" or "C.N.A."

No person shall use or assume the title "Certified Nurse Aide" or abbreviation "C.N.A." or any words, letters, signs, or devices to indicate that person is a certified nurse aide unless certified by the Board.

1989, c. 278 .

§ 54.1-3023. Application for certification by competency evaluation

A. Every applicant for certification by competency evaluation shall pay the required application fee and shall submit written evidence that the applicant:

1. Has not committed any act or omission that would be grounds for discipline or denial of certification under this article; and

2. Has successfully completed an education or training program approved by the Board.

B. The Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for certification as a nurse aide during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for certification.

1989, c. 278; 2011, c. 390.

§ 54.1-3024. Application for certification by endorsement

Every applicant for certification by endorsement shall pay the required application fee, shall submit the information required by the Board in the manner and form specified by the Board, and shall submit written evidence that the applicant:

1. Is certified to practice as a nurse aide by another state or territory of the United States (with requirements that are essentially similar to the requirements for certification set out in this article) and that such certification is in good standing;

2. Has not committed any act or omission that would be grounds for discipline or denial of certification under this article;

3. Has no record of abuse, negligent practice, or misappropriation of a patient's or resident's property or any disciplinary action taken or pending in any other state or territory against such certification.

1989, c. 278 .

§ 54.1-3025. Certification by competency evaluation

All applicants except those certified by endorsement shall be required to pass a clinical competency evaluation. Such evaluation shall be in written or oral form and shall include the following areas:

1. Basic nursing skills;

2. Personal care skills;

3. Recognition of mental health and social services needs;

4. Basic restorative services; and

5. Resident or patient rights.

1989, c. 278 .

§ 54.1-3025.1. Advanced certification; renewal

A. The Board shall develop and promulgate regulations to establish a career advancement certification that will indicate enhanced competence in patient care tasks and enable certified nurse aides to expand the scope of the responsibilities and duties delegated to them. An advanced certificate shall be awarded upon successful completion of the required educational and training standards set by the Board. Each institution that desires to conduct programs to provide training for such advanced certificates shall be approved by the Board pursuant to § 54.1-3005.

B. An advanced certificate issued to a certified nurse aide shall be renewed biennially upon payment of any specified fee. The certified nurse aide shall submit proof of compliance with any requirements of law and regulation concerning competence as established by the Board.

2001, c. 448.

§ 54.1-3026. Renewal of certification

Each certificate issued to practice as a nurse aide shall be renewed annually upon payment of any specified fee. The nurse aide shall submit proof of compliance with any requirements of law and regulation concerning continued employment or competence as a condition of such renewal. The Board shall establish requirements for the renewal of certifications consistent with federal law.

1989, c. 278; 2016, c. 87.

§ 54.1-3027. Exclusions

This article shall not be construed to affect or apply to:

1. The gratuitous care of friends or family members;

2. A person for hire who does not represent himself as or hold himself out to the public as a certified nurse aide. However, a person for hire who is not a certified nurse aide in accordance with this article shall not hold himself out as a certified nurse aide or be employed as a certified nurse aide.

1989, c. 278 .

§ 54.1-3028. Registration of nurse aides prior to October 1, 1989

The Board shall add to its registry of certified nurse aides any individual determined by the Board of Nursing as being qualified to be a nurse aide by reason of training in accordance with federal law prior to October 1, 1989. Such individuals shall meet any continuing requirements of the Board to retain certification.

1989, c. 278 .

§ 54.1-3028.1. Nurse aide education programs

Nurse aide education programs designed to prepare nurse aides for certification shall be a minimum of 120 clock hours in length. The curriculum of such programs shall include communication and interpersonal skills, safety and emergency procedures, personal care skills, observational and reporting techniques, appropriate clinical care of the aged and disabled, skills for basic restorative services, clients' rights, legal aspects of practice as a certified nurse aide, occupational health and safety measures, culturally sensitive care, and appropriate management of conflict. The Board shall promulgate regulations to implement the provisions of this section.

1999, c. 783; 2016, cc. 109, 582.

Article 5 - LICENSURE OF MASSAGE THERAPISTS

§ 54.1-3029. Qualifications for a licensed massage therapist

A. In order to be licensed as a massage therapist, the applicant shall furnish evidence satisfactory to the Board that the applicant:

1. Is at least 18 years old;

2. (Effective until October 1, 2016) Has successfully completed a minimum of 500 hours of training from a massage therapy program, certified or approved by the State Council of Higher Education or an agency in another state, the District of Columbia, or a United States territory that approves educational programs, notwithstanding the provisions of § 23-276.2;

2. (Effective October 1, 2016) Has successfully completed a minimum of 500 hours of training from a massage therapy program, certified or approved by the State Council of Higher Education or an agency in another state, the District of Columbia, or a United States territory that approves educational programs, notwithstanding the provisions of § 23.1-226;

3. Has passed the Licensing Examination of the Federation of State Massage Therapy Boards or an examination deemed acceptable to the Board of Nursing; and

4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of licensure as set forth in this chapter.

B. The Board may issue a provisional license to an applicant prior to passing the Licensing Examination of the Federation of State Massage Therapy Boards for such time and in such manner as prescribed by the Board. No more than one provisional license shall be issued to any applicant.

C. The Board may license without examination any applicant who is licensed as a massage therapist in another state, the District of Columbia, a United States possession or territory, or another country, and, in the opinion of the Board, meets the requirements for licensed massage therapists in the Commonwealth.

1996, c. 166; 1997, c. 599; 2004, c. 991; 2012, c. 764; 2016, c. 324.

§ 54.1-3029.1. Advisory Board on Massage Therapy

The Advisory Board on Massage Therapy shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, registration, regulation, and standards of professional conduct of massage therapists as described in § 54.1-3029. The Advisory Board shall also assist in such other matters relating to the practice of massage therapy as the Board may require.

The Advisory Board on Massage Therapy shall consist of five members to be appointed by the Governor for four-year terms as follows: three members shall be licensed massage therapists who have practiced in the Commonwealth for not less than three years prior to their appointment, one shall be an administrator or faculty member of a nationally accredited school of massage therapy, and one shall be a citizen member appointed from the Commonwealth at large.

The Advisory Board shall elect a chairman and vice-chairman from among its membership. The Advisory Board shall meet at least once a year 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.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two successive terms.

2009, c. 534; 2016, c. 324.

Article 6 - NURSE LICENSURE COMPACT

. (For contingent repeal, see Editor's note) Definitions

As used in the Nurse Licensure Compact, unless the context requires a different meaning:

"Adverse action" means a home or remote state action.

"Alternative program" means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

"Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state licensing boards.

"Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

"Head of the nurse licensing board" means the Executive Director of the Board of Nursing as used to define the compact administrator.

"Home state" means the party state which is the nurse's primary state of residence.

"Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

"Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

"Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

"Nurse" means a registered nurse or licensed practical nurse, as those terms are defined in § 54.1-3000.

"Party state" means any state that has adopted this Compact.

"Remote state" means a party state, other than the home state, where the patient is located at the time nursing care is provided, or, in the case of the practice of nursing not involving a patient, in such party state where the recipient of the nursing practice is located.

"Remote state action" means any administrative, civil, equitable or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state, and cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

"State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

"State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or

requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

2003, c. 249.

. (For contingent repeal, see Editor's note) Findings and declaration of purpose for compact
A. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advance communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

B. The general purposes of this Compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction; and

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

2003, c. 249.

. (For contingent repeal, see Editor's note) General provisions and jurisdiction
A. A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical nurse in such party state. In order

to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

B. Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

C. Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

D. This Compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advance practice registered nurse authorization.

E. Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

2003, c. 249.

. (For contingent repeal, see Editor's note) Applications for licensure in a party state

A. Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

B. A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

C. A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

D. When a nurse changes primary state of residence by:

1. Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

2. Moving from a non-party state to a party state, and obtains a license from the new home state, the individual state license issued by the non-party state is not affected and will remain in full force if so provided by the laws of the non-party state;

3. Moving from a party state to a non-party state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

2003, c. 249.

. (For contingent repeal, see Editor's note) Adverse actions

In addition to the general provisions described in § 54.1-3032, the following provisions apply:

1. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

2. The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate actions, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

3. A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

4. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

5. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

6. Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain non-public if required by the party state's laws. Party states must require nurses who enter any

alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

2003, c. 249.

. (For contingent repeal, see Editor's note) Additional authorities invested in party state nursing licensing boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

1. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

2. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

3. Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state; and

4. Promulgate uniform rules and regulations as provided for in subsection C of § 54.1-3037.

2003, c. 249.

. (For contingent repeal, see Editor's note) Coordinated licensure information system

A. All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

C. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

D. Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

E. Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

F. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

G. The Compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this Compact.

2003, c. 249.

. (For contingent repeal, see Editor's note) Compact administration and interchange of information

A. The head of the nurse licensing board, or his designee, of each party state shall be the administrator of this Compact for his state.

B. The Compact administrator of each party state shall furnish to the Compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this Compact.

C. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states, under the authority invested by subdivision 4 of § 54.1-3035.

2003, c. 249.

. (For contingent repeal, see Editor's note) Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this Compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this Compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

2003, c. 249.

. (For contingent repeal, see Editor's note) Entry into force, withdrawal and amendment

A. This Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

B. No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring prior to the withdrawal.

C. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this Compact.

D. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

2003, c. 249.

. (For contingent repeal, see Editor's note) Construction and severability

A. This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

B. In the event party states find a need for settling disputes arising under this Compact:

1. The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the Compact administrator in the home state; an individual appointed by the Compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

2. The decision of a majority of the arbitrators shall be final and binding.

2003, c. 249.

Article 6.1 - NURSE LICENSURE COMPACT

. (Contingent effective date -- see note) Findings and declaration of purpose

A. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

B. The general purposes of this Compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

6. Decrease redundancies in the consideration and issuance of nurse licenses; and

7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

2016, c. 108.

. (Contingent effective date -- see note) Definitions

As used in the Nurse Licensure Compact, unless the context requires a different meaning:

"Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

"Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

"Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

"Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

"Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

"Home state" means the party state which is the nurse's primary state of residence.

"Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

"Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

"Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

"Nurse" means RN or LPN/VN, as those terms are defined by each party state's practice laws.

"Party state" means any state that has adopted this Compact.

"Remote state" means a party state, other than the home state.

"Single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

"State" means a state, territory, or possession of the United States and the District of Columbia.

"State practice laws" means a party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

2016, c. 108.

. (Contingent effective date -- see note) General provisions and jurisdiction

A. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

B. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the

submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

C. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

1. Meets the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

2. Has (a) graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program or (b) graduated from a foreign RN or LPN/VN prelicensure education program that has been approved by the authorized accrediting body in the applicable country and has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

3. Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;

4. Has successfully passed an NCLEX-RN(R) or NCLEX-PN(R) Examination or recognized predecessor, as applicable;

5. Is eligible for or holds an active, unencumbered license;

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

9. Is not currently enrolled in an alternative program;

10. Is subject to self-disclosure requirements regarding current participation in an alternative program; and

11. Has a valid United States social security number.

D. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege, such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The

administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

E. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.

F. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this Compact shall affect the requirements established by a party state for the issuance of a single-state license.

G. Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

1. A nurse who changes primary state of residence after this Compact's effective date must meet all applicable requirements of subsection C to obtain a multistate license from a new home state.

2. A nurse who fails to satisfy the multistate licensure requirements in subsection C due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators (Commission).

2016, c. 108.

. (Contingent effective date -- see note) Applications for licensure in a party state

A. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

B. A nurse may hold a multistate license issued by the home state in only one party state at a time.

C. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Commission.

1. The nurse may apply for licensure in advance of a change in primary state of residence.

2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

D. If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

2016, c. 108.

. (Contingent effective date -- see note) Additional authorities invested in party state licensing boards

A. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

1. Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

a. Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

b. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

3. Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

B. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

C. Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

2016, c. 108.

. (Contingent effective date -- see note) Coordinated licensure information system and exchange of information

A. All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. The Commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

C. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

D. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

E. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

F. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

G. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

H. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:

1. Identifying information;

2. Licensure data;

3. Information related to alternative program participation; and

4. Other information that may facilitate the administration of this Compact, as determined by Commission rules.

I. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

2016, c. 108.

. (Contingent effective date -- see note) Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

A. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators (Commission).

1. The Commission is an instrumentality of the party states.

2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, voting, and meetings.

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any

administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in § 54.1-3040.8.

5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

a. Noncompliance of a party state with its obligations under this Compact;

b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law-enforcement purposes;

i. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or

j. Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a

closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

4. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the Commission; and

6. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment or reserving of all of its debts and obligations.

D. The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the Commission.

E. The Commission shall maintain its financial records in accordance with the bylaws.

F. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

G. The Commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;

5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space, or other resources;

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

7. To accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of the same, provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal or mixed, provided that at all times the Commission shall avoid any appearance of impropriety;

9. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

10. To establish a budget and make expenditures;

11. To borrow money;

12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives and other such interested persons;

13. To provide and receive information from, and to cooperate with, law-enforcement agencies;

14. To adopt and use an official seal; and

15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of nurse licensure and practice.

H. Financing of the Commission.

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.

3. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

4. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

I. Qualified immunity, defense, and indemnification.

1. The administrators, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities, provided that nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

2. The Commission shall defend any administrator, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

3. The Commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment,

duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

2016, c. 108.

. (Contingent effective date -- see note) Rulemaking

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

B. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

C. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission; and

2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

D. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and submit any written comments.

E. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

F. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

G. The Commission shall publish the place, time, and date of the scheduled public hearing.

1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

H. If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or party state funds; or

3. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

L. The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

2016, c. 108.

. (Contingent effective date -- see note) Oversight, dispute resolution, and enforcement

A. Oversight.

1. Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.

2. The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the Commission and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the

Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, technical assistance and termination.

1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state's membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and to each of the party states.

4. A state whose membership in this Compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution.

1. Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the Commission cannot resolve disputes among party states arising under this Compact:

a. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

b. The decision of a majority of the arbitrators shall be final and binding.

D. Enforcement.

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

2016, c. 108.

. (Contingent effective date -- see note) Effective date, withdrawal, and amendment

A. This Compact shall become effective and binding on the earlier of the date of legislative enactment of this Compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this Compact that also were parties to the prior Nurse Licensure Compact (Prior Compact) superseded by this Compact shall be deemed to have withdrawn from said Prior Compact within six (6) months after the effective date of this Compact.

B. Each party state to this Compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the Prior Compact until such party state has withdrawn from the Prior Compact.

C. Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

D. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

E. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this Compact.

F. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

G. Representatives of non-party states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

2016, c. 108.

. (Contingent effective date -- see note) Construction and severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

2016, c. 108.

Article 7 - MEDICATION AIDES

§ 54.1-3041. Registration required

A medication aide who administers drugs that would otherwise be self-administered to residents in an assisted living facility licensed by the Department of Social Services shall be registered by the Board.

2005, cc. 610, 924.

§ 54.1-3042. Application for registration by competency evaluation

A. Every applicant for registration as a medication aide by competency evaluation shall pay the required application fee and shall submit written evidence that the applicant:

1. Has not committed any act that would be grounds for discipline or denial of registration under this article;

2. Has successfully completed a staff training program in direct care approved by the Department of Social Services or an approved nurse aide education program;

3. Has successfully completed an education or training program approved by the Board that shall include one of the following:

a. A medication aide education or training program approved by the Board that shall be 68 hours combined classroom instruction and clinical skills practice curriculum; or

b. A nursing education program preparing for registered nurse or practical nurse licensure; and

4. Has successfully completed a competency evaluation consisting of both a clinical evaluation of minimal competency and a written examination as specified by the Board.

B. The Board shall (i) make the written examination available in both electronic and non-electronic format, (ii) provide sufficient locations for the administration of any written examination required for registration under this section, to ensure adequate access to the written examination for all applicants, (iii) establish a procedure pursuant to which an examination shall be offered at or near the location of an education or training course, upon the request of five or more applicants, provided that the security of the examination and the integrity of the administration of the examination are ensured and that any additional costs are born by the requesting applicants, and (iv) provide written notice to applicants of the results of any competency examination completed by the applicants within seven days of completion of the examination.

C. Any applicant under this section who has provided to the Board evidence of successful completion of the education or training course required for registration may act as a medication aide on a provisional basis for no more than 120 days before successfully completing any required competency evaluation. However, upon notification of failure to successfully complete the written examination after three attempts, an applicant shall immediately cease acting as a medication aide.

D. Any applicant under this section who shall apply by endorsement from any state or the District of Columbia that requires registration of medication aides who has met the requirements of registration in such jurisdiction may be deemed eligible to sit for the competency evaluation required pursuant to this section, subject to approval of the Board.

2005, cc. 610, 924; 2009, cc. 133, 837.

§ 54.1-3043. Continuing training required

Every applicant for registration as a medication aide shall complete ongoing training related to the administration of medications as required by the Board.

2005, cc. 610, 924.

Chapter 31 - NURSING HOME AND ASSISTED LIVING FACILITY ADMINISTRATORS

§ 54.1-3100. Definitions

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

"Assisted living facility" means any public or private assisted living facility, as defined in § 63.2-100, that is required to be licensed as an assisted living facility by the Department of Social Services under the provisions of Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility.

"Board" means the Board of Long-Term Care Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 and the regulations of the Board of Health.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

1970, c. 775, § 54-900; 1988, c. 765; 2005, cc. 610, 924.

§ 54.1-3101. Board of Long-Term Care Administrators; terms; officers; quorum; special meetings

The Board of Long-Term Care Administrators is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board of Long-Term Care Administrators shall consist of nine nonlegislative citizen members to be appointed by the Governor. Nonlegislative citizen members shall be appointed as follows: three who are licensed nursing home administrators; three who are assisted living facility administrators; two who are from professions and institutions concerned with the care and treatment of chronically ill and elderly or mentally impaired patients or residents; and one who is a resident of a nursing home or assisted living facility or a family member or guardian of a resident of a nursing home or assisted living facility. One of the licensed nursing home administrators shall be an administrator of a proprietary nursing home. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.

After the initial staggering of terms, the terms of Board members shall be four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed consistent with § 54.1-107.

The Board shall annually elect a chairman and vice-chairman from among its membership. Five members of the Board, including one who is not a licensed nursing home administrator or assisted living facility administrator, shall constitute a quorum. Special meetings of the Board shall be called by the chairman upon the written request of any three members.

All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses shall be provided by the Department of Health Professions.

The Department of Health Professions shall provide staff support to the Board. All agencies of the Commonwealth shall provide assistance to the Board, upon request.

The Board shall be authorized to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

1970, c. 775, §§ 54-903, 54-907; 1973, c. 379; 1981, c. 447; 1987, c. 686, § 54-903.1; 1988, c. 765; 2001, cc. 527, 554; 2005, cc. 610, 924.

§ 54.1-3102. License required

A. In order to engage in the general administration of a nursing home, it shall be necessary to hold a nursing home administrator's license issued by the Board.

B. In order to engage in the general administration of an assisted living facility, it shall be necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the Board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § 63.2-100, shall not be required to be licensed.

1979, c. 408, § 54-901.1; 1988, c. 765; 2005, cc. 610, 924.

§ 54.1-3102.1. Waiver of experiential requirements for licensure authorized

The Board may waive the experiential or practicum requirements for an applicant for a nursing home administrator's license if the applicant demonstrates significant experience, such as, but not limited to, twenty years of executive experience as an officer in the home office of one or more multi-facility nursing home companies and a minimum of four years of executive responsibility for the operation of one or more nursing homes.

1996, c. 762.

§ 54.1-3103. Administrator required for operation of nursing home; operation after death, illness, etc., of administrator; notification of Board

All licensed nursing homes within the Commonwealth shall be under the supervision of an administrator licensed by the Board. If a licensed nursing home administrator dies, becomes ill, resigns or is discharged, the nursing home that was administered by him at the time of his death, illness, resignation or discharge may continue to operate until his successor qualifies, but in no case for longer than is permitted by the licensing authority for the nursing home. The temporary supervisor or administrator shall immediately notify the Board of Long-Term Care Administrators and the Commissioner of Health that the nursing home is operating without the supervision of a licensed nursing home administrator.

1970, c. 775, § 54-901; 1974, c. 600; 1988, c. 765; 2005, cc. 610, 924.

§ 54.1-3103.1. Administrator required for operation of assisted living facility; operation after death, illness, etc., of administrator; notification of Board; administrators operating more than one facility

A. All licensed assisted living facilities within the Commonwealth shall be under the supervision of an administrator licensed by the Board, except as provided in subsection B of § 54.1-3102. If a licensed assisted living facility administrator dies, resigns, is discharged, or becomes unable to

perform his duties, the assisted living facility may continue to operate with an acting administrator in accordance with the provisions of § 63.2-1803. The facility shall immediately notify the Board of Long-Term Care Administrators and the regional licensing office of the Department of Social Services that the assisted living facility is operating without the supervision of a licensed assisted living facility administrator and shall provide the last date of employment of the licensed administrator. When an acting administrator is named, he shall notify the Department of Social Services of his employment and, if he is intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Board within 10 days of employment.

B. Nothing in this chapter shall prohibit an assisted living administrator from serving as the administrator of record for more than one assisted living facility as permitted by regulations of the licensing authority for the facility.

2005, cc. 610, 924; 2011, c. 609.

Chapter 32 - OPTOMETRY

Article 1 - GENERAL PROVISIONS

§ 54.1-3200. Definitions

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

"Board" means the Board of Optometry.

"Optometrist" means any person practicing the profession of optometry as defined in this chapter and the regulations of the Board.

"Practice of optometry" means the examination of the human eye to ascertain the presence of defects or abnormal conditions which may be corrected or relieved by the use of lenses, prisms or ocular exercises, visual training or orthoptics; the employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye; the use of testing appliances for the purpose of the measurement of the powers of vision; the examination, diagnosis, and optometric treatment in accordance with this chapter, of conditions and visual or muscular anomalies of the human eye; the use of diagnostic pharmaceutical agents set forth in § 54.1-3221; and the prescribing or adapting of lenses, prisms or ocular exercises, visual training or orthoptics for the correction, relief, remediation or prevention of such conditions. An optometrist may treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents only as permitted under this chapter.

"TPA-certified optometrist" means an optometrist who is licensed under this chapter and who has successfully completed the requirements for TPA certification established by the Board pursuant to Article 5 (§ 54.1-3222 et seq.). Such certification shall enable an optometrist to prescribe and administer Schedule II controlled substances consisting of hydrocodone in combination with

acetaminophen and Schedules III through VI controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) to treat diseases, including abnormal conditions, of the human eye and its adnexa, as determined by the Board. Such certification shall not, however, permit treatment through surgery, including, but not limited to, laser surgery or other invasive modalities, except for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine.

The foregoing shall not restrict the authority of any optometrist licensed or certified under this chapter for the removal of superficial foreign bodies from the human eye and its adnexa or from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by optometrists, if such activities or functions are authorized by and performed for such optometrists and responsibility for such activities or functions is assumed by such optometrists.

Code 1950, § 54-368; 1988, cc. 243, 737, 765; 1991, c. 290; 1996, cc. 152, 158, 365, 436; 2004, c. 744; 2015, c. 355.

§ 54.1-3201. What constitutes practice of optometry

Any person who in any way advertises himself as an optometrist or uses the title of doctor of optometry (O.D.) or any other letters or title in connection with his name which in any way conveys the impression that he is engaged in the practice of optometry shall be deemed to be practicing optometry within the meaning of this chapter.

Code 1950, § 54-368; 1988, cc. 243, 737, 765.

§ 54.1-3202. Exemptions

This chapter shall not apply to:

1. Physicians licensed to practice medicine by the Board of Medicine or to prohibit the sale of nonprescription eyeglasses and sunglasses; or

2. Any optometrist rendering free health care to an underserved population in Virginia who (i) does not regularly practice optometry in Virginia, (ii) holds a current valid license or certificate to practice optometry in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care in an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of his license or certification in such other jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any optometrist whose license or certificate has been

previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow an optometrist who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state.

Code 1950, § 54-369; 1988, c. 765; 2002, c. 740; 2008, c. 674; 2009, cc. 353, 761.

§ 54.1-3203. License to be displayed

Every person practicing optometry shall display his license in a conspicuous place in the principal office in which he practices.

Code 1950, § 54-386; 1988, c. 765.

§ 54.1-3204. Prohibited acts

It shall be unlawful for any person:

1. To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.

2. To impersonate a licensed optometrist of like or different name.

3. To buy or sell or fraudulently obtain a diploma or license.

4. To do any act for which if he were an optometrist his license could be revoked as provided by this chapter.

5. To possess any trial lenses, trial frames, graduated test cards, appliances or instruments used in the practice of optometry, self-testing devices or eyeglass vending machines for the purpose of fitting or prescribing glasses in the practice of optometry, unless he is or unless he regularly employs on the premises a licensed optometrist or a licensed physician.

6. To publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of the Board governing advertising by optometrists.

7. To sell, provide, furnish, supply or duplicate eyeglasses, or lenses for the correction of vision without the prescription of a licensed physician or licensed optometrist, unless he is the holder of a license to practice optometry or a license to practice medicine under the laws of this Commonwealth.

8. To sell or dispense contact lenses, including plano or cosmetic lenses, without holding a license issued by the Board. This subdivision shall not apply to a licensed optician operating or working in a retail establishment, when selling or dispensing contact lenses, including plano or cosmetic

lenses, upon the valid written prescription of an individual licensed to practice medicine or osteopathy, or a licensed optometrist.

9. To dispense, administer, or sell an ophthalmic device containing Schedule III, IV, or VI controlled substances or an over-the-counter medication without holding a license issued by the Board, including TPA certification. An "ophthalmic device" shall mean any device, as defined in the Drug Control Act (§ 54.1-3400 et seq.) customarily used primarily for ophthalmic purposes, including an ophthalmic device classified by the United States Food and Drug Administration as a drug. Nothing in this subsection shall preclude a pharmacist from dispensing an ophthalmic device, as defined in this subsection, upon the written and valid prescription of an optometrist, providing the patient is then advised by the pharmacist to return for follow-up care to the optometrist prescribing the ophthalmic device.

The provisions of this section shall be enforced in accordance with this chapter and § 54.1-2506.

Code 1950, § 54-396; 1976, c. 758; 1977, c. 161; 1979, c. 39; 1988, c. 765; 2009, cc. 353, 761.

§ 54.1-3205. Practicing in a commercial or mercantile establishment

A. It shall be unlawful for any optometrist to practice his profession as a lessee of or in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice optometry as a lessee of or in the commercial or mercantile establishment.

B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time licensed optometrist in its established place of business on June 21, 1938.

C. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities.

D. For the purposes of this section, an optometrist shall be deemed to be practicing in a commercial or mercantile establishment if he practices, whether directly or indirectly, as an officer, employee, lessee or agent of any person or entity in any location that provides direct access to or from a commercial or mercantile establishment. Direct access includes any entrance or exit, except an entrance or exit closed to the public and used solely for emergency egress pursuant to applicable state and local building and fire safety codes, that prohibits a person from exiting the building or structure occupied by such practice or establishment (i) onto an exterior sidewalk or public way or (ii) into a common area that is not under the control of either the optometry practice or the commercial or mercantile establishment, such as into the common areas of an enclosed shopping mall. For the purposes of this section, neither an optometric practice nor an ophthalmologic practice which sells eyeglasses or contact lenses ancillary to its practice shall be deemed a commercial or mercantile establishment. Further, any entity that is engaged in the sale of eyeglasses or contact lenses, the majority of the beneficial ownership of which is owned by an oph-

thalmologic practice and/or one or more ophthalmologists, shall not be deemed a commercial or mercantile establishment.

E. This section shall not be construed to prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them.

Code 1950, §§ 54-388, 54-397.1; 1968, c. 505; 1976, c. 758; 1977, c. 161; 1979, c. 39; 1988, c. 765; 2005, cc. 711, 720.

§ 54.1-3205.1. Supervision by unlicensed persons prohibited

No optometrist shall be directly or indirectly supervised within the scope of the practice of optometry by any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not a Virginia-licensed optometrist or physician. No officer, employee, or agent of a commercial or mercantile establishment, who is not a Virginia-licensed optometrist or physician, shall directly or indirectly control, dictate, or influence the professional judgment, including but not limited to the level or type of care or services rendered, of the practice of optometry by a licensed optometrist.

1990, c. 307 .

§ 54.1-3206. Report of conviction or injunction to Board; revocation or suspension of license

It shall be the duty of the clerk of every circuit court in which any person is convicted of any violation of this chapter or enjoined from unlawfully practicing optometry to report the same to the Board. The Board may thereupon suspend or revoke any certificate or license held by the person so convicted or enjoined. Every such report shall be directed to the secretary of the Board.

1979, c. 39, § 54-398.02; 1988, c. 765.

Article 2 - BOARD OF OPTOMETRY

§ 54.1-3207. Board of Optometry

The Board of Optometry shall be composed of six members as follows: five licensed optometrists and one citizen member. The terms of office of the members shall be four years. The professional members of the Board shall have been engaged in the practice of optometry for at least five years prior to the date of their appointment. After July 1, 1996, all professional members newly appointed to the Board shall be certified in the administration of therapeutic pharmaceutical agents pursuant to Article 5 (§ 54.1-3222 et seq.) of this chapter.

Code 1950, §§ 54-371, 54-375; 1979, c. 39; 1986, c. 464; 1988, cc. 42, 765; 1996, cc. 152, 158.

§ 54.1-3208. Nominations

Nominations may be made for each professional vacancy from a list of at least three names submitted to the Governor by the Virginia Optometric Association, Incorporated. The Governor may

notify the Association promptly of any professional vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees of the Association.

Code 1950, § 54-372; 1986, c. 464; 1988, c. 765.

§ 54.1-3209. Oaths and testimony

Any member of the Board may, upon being designated by a majority of the Board, administer oaths or take testimony concerning any matter within the jurisdiction of the Board.

Code 1950, § 54-377; 1988, c. 765.

§ 54.1-3210. Seal; executive director

The Board shall adopt a seal of which the executive director shall have the custody. The executive director shall keep a record of all proceedings of the Board, which shall be open to the public for inspection.

Code 1950, § 54-378; 1988, c. 765.

§ 54.1-3211. Examination

The Board shall set the necessary standards to be attained in the examinations to entitle the candidate to receive a license to practice optometry.

The examination shall be given at least semiannually if there are any candidates who have applied to the Board for examination at least 30 days before the date for the examination.

The examination shall include anatomy; physiology; pathology; general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents; and the use of the appropriate instruments.

The Board may determine a score that it considers satisfactory on any written examination of the National Board of Examiners in Optometry. The Board may waive its examination for a person who achieves a satisfactory score on the examination of the National Board of Examiners in Optometry.

Those persons licensed on or before June 30, 1997, to practice optometry in this state but not certified to administer diagnostic pharmaceutical agents may continue to practice optometry but may not administer diagnostic pharmaceutical agents without satisfying the requirements of this section. Those persons licensed after June 30, 1997, shall be considered as certified to administer diagnostic pharmaceutical agents. After June 30, 2004, every person who is initially licensed to practice optometry in Virginia shall meet the qualifications for a TPA-certified optometrist.

Code 1950, §§ 54-380 through 54-382; 1972, c. 824; 1973, c. 90; 1988, c. 765; 1996, cc. 365, 436; 2004, c. 744.

Article 3 - LICENSURE OF OPTOMETRISTS

§ 54.1-3212. Qualifications of applicants

An application for a license to practice optometry shall be made in writing and shall be accompanied by satisfactory proof that the applicant has been graduated and received a doctor of optometry degree from a school of optometry approved by the Board.

Code 1950, § 54-382; 1972, c. 824; 1973, c. 90; 1988, c. 765.

§ 54.1-3213. Issuance of license; fee; renewal

Every candidate successfully passing the examination shall be licensed by the Board as possessing the qualifications required by law to practice optometry.

The fee for examination and licensure shall be prescribed by the Board and shall be paid to the executive director of the Board by the applicant upon filing his application.

Every license to practice optometry granted under the provisions of this chapter shall be renewed at such time, in such manner and upon payment of such fees as the Board may prescribe.

Code 1950, §§ 54-383, 54-393, 54-394; 1970, c. 341; 1976, c. 32; 1977, c. 161; 1979, c. 39; 1988, c. 765.

§ 54.1-3214. Repealed

Repealed by Acts 2016, c. 92, cl. 1.

§ 54.1-3215. Reprimand, revocation and suspension

The Board may revoke or suspend a license or reprimand the licensee for any of the following causes:

1. Fraud or deceit in his practice;

2. Conviction of any felony under the laws of the Commonwealth, another state, the District of Columbia or any United States possession or territory or of any misdemeanor under such laws involving moral turpitude;

3. Conducting his practice in such a manner as to endanger the health and welfare of his patients or the public;

4. Use of alcohol or drugs to the extent such use renders him unsafe to practice optometry or mental or physical illness rendering him unsafe to practice optometry;

5. Knowingly and willfully employing an unlicensed person to do anything for which a license to practice optometry is required;

6. Practicing optometry while suffering from any infectious or contagious disease;

7. Neglecting or refusing to display his license and the renewal receipt for the current year;

8. Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient;

9. Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations;

10. Employing, procuring, or inducing a person not licensed to practice optometry to so practice;

11. Aiding or abetting in the practice of optometry any person not duly licensed to practice in this Commonwealth;

12. Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the license;

13. Lending, leasing, renting or in any other manner placing his license at the disposal or in the service of any person not licensed to practice optometry in this Commonwealth;

14. Splitting or dividing a fee with any person or persons other than with a licensed optometrist who is a legal partner or comember of a professional limited liability company formed to engage in the practice of optometry;

15. Practicing optometry where any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not licensed in Virginia to practice optometry or medicine directly or indirectly controls, dictates, or influences the professional judgment, including but not limited to the level or type of care or services rendered, of the licensed optometrist;

16. Violating other standards of conduct as adopted by the Board;

17. Violating, assisting, inducing or cooperating with others in violating any provisions of law relating to the practice of optometry, including the provisions of this chapter, or of any regulation of the Board.

Code 1950, § 54-388; 1968, c. 505; 1976, c. 758; 1977, c. 161; 1979, c. 39; 1988, c. 765; 1990, c. 307; 1992, c. 574; 1999, c. 937.

§ 54.1-3216. Repealed
Repealed by Acts 2004, c. 64.

§ 54.1-3217. Repealed
Repealed by Acts 1997, c. 556.

§ 54.1-3218. Repealed
Repealed by Acts 2003, cc. 753 and 762.

§ 54.1-3219. Continuing education
A. As a prerequisite to renewal of a license or reinstatement of a license, each optometrist shall be required to complete 20 hours of continuing education relating to optometry, as approved by the Board, each year. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle. The courses shall include, but need not be limited to, the utilization and

application of new techniques, scientific and clinical advances, and new achievements of research. The Board shall prescribe criteria for approval of courses of study. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed optometrist at the time he applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.

B. Of the 20 hours of continuing education relating to optometry required pursuant to subsection A:

1. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another;

2. No more than two hours may consist of courses related to recordkeeping, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products; and

3. For TPA-certified optometrists, at least 10 hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

C. Nothing in this subsection shall prevent or limit the authority of the Board to require additional hours or types of continuing education as part or in lieu of disciplinary action.

1976, c. 32, § 54-394.1; 1988, c. 765; 2016, c. 89.

Article 4 - CERTIFICATION FOR ADMINISTRATION OF DIAGNOSTIC PHARMACEUTICAL AGENTS

§ 54.1-3220. Certification for administration of diagnostic pharmaceutical agents

In order to become certified to administer diagnostic pharmaceutical agents for the purpose of examining and determining abnormal or diseased conditions of the human eye or related structures, an optometrist shall:

1. Complete successfully a Board-approved course in general and ocular pharmacology as it relates to the practice of optometry which shall consist of at least fifty-five classroom hours including a minimum of fifteen classroom hours in general pharmacology, twenty classroom hours in ocular pharmacology and twenty classroom hours of clinical laboratory presented by a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Post Secondary Accreditation or by the United States Department of Education.

2. Pass a Board-approved, performance-based examination on general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents as defined in this article.

1983, c. 6, § 54-386.1; 1988, c. 765; 1996, cc. 365, 436.

§ 54.1-3221. "Diagnostic pharmaceutical agents" defined; utilization; acquisition

A. Certified optometrists may administer diagnostic pharmaceutical agents only by topical application to the human eye. "Diagnostic pharmaceutical agents" shall be defined as Schedule VI controlled substances as set forth in the Drug Control Act (§ 54.1-3400 et seq.) that are used for the purpose of examining and determining abnormal or diseased conditions of the human eye or related structures.

B. Any optometrist who utilizes diagnostic pharmaceutical agents without being certified as required by this article shall be subject to the disciplinary sanctions provided in this chapter.

C. Licensed drug suppliers or pharmacists are authorized to supply optometrists with diagnostic pharmaceutical agents upon presentation of evidence of Board certification for administration of such drugs.

1983, c. 6, § 54-386.2; 1988, c. 765; 1992, c. 146; 2004, c. 744.

Article 5 - CERTIFICATION FOR ADMINISTRATION OF THERAPEUTIC PHARMACEUTICAL AGENTS (TPAS)

§ 54.1-3222. TPA certification; certification for treatment of diseases or abnormal conditions with therapeutic pharmaceutical agents (TPAs)

A. The Board shall certify an optometrist to prescribe for and treat diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents (TPAs), if the optometrist files a written application, accompanied by the fee required by the Board and satisfactory proof that the applicant:

1. Is licensed by the Board as an optometrist and certified to administer diagnostic pharmaceutical agents pursuant to Article 4 (§ 54.1-3220 et seq.);

2. Has satisfactorily completed such didactic and clinical training programs for the treatment of diseases and abnormal conditions of the eye and its adnexa as are determined, after consultation with a school or college of optometry and a school of medicine, to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients; and

3. Passes such examinations as are determined to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients.

B. TPA certification shall enable an optometrist to prescribe and administer, within his scope of practice, Schedule II controlled substances consisting of hydrocodone in combination with

acetaminophen and Schedules III through VI controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) to treat diseases and abnormal conditions of the human eye and its adnexa as determined by the Board, within the following conditions:

1. Treatment with oral therapeutic pharmaceutical agents shall be limited to (i) analgesics included on Schedule II controlled substances as defined in § 54.1-3448 of the Drug Control Act (§ 54.1-3400 et seq.) consisting of hydrocodone in combination with acetaminophen, and analgesics included on Schedules III through VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act, which are appropriate to alleviate ocular pain and (ii) other Schedule VI controlled substances as defined in § 54.1-3455 of the Drug Control Act appropriate to treat diseases and abnormal conditions of the human eye and its adnexa.

2. Therapeutic pharmaceutical agents shall include topically applied Schedule VI drugs as defined in § 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.).

3. Treatment of angle closure glaucoma shall be limited to initiation of immediate emergency care.

4. Treatment of infantile or congenital glaucoma shall be prohibited.

5. Treatment through surgery or other invasive modalities shall not be permitted, except for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine.

6. Entities permitted or licensed by the Board of Pharmacy to distribute or dispense drugs, including, but not limited to, wholesale distributors and pharmacists, shall be authorized to supply TPA-certified optometrists with those therapeutic pharmaceutical agents specified by the Board on the TPA-Formulary.

1996, cc. 152, 158; 2004, c. 744; 2015, c. 355.

§ 54.1-3223. Regulations relating to instruction and training, examination, and therapeutic pharmaceutical agents

A. The Board shall promulgate such regulations governing the treatment of diseases and abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents by TPA-certified optometrists as are reasonable and necessary to ensure an appropriate standard of medical care for patients, including, but not limited to, determinations of the diseases and abnormal conditions of the human eye and its adnexa that may be treated by TPA-certified optometrists, treatment guidelines, and the drugs specified on the TPA-Formulary.

In establishing standards of instruction and training, the Board shall consult with a school or college of optometry and a school or college of medicine and shall set a minimum number of hours of clinical training to be supervised by an ophthalmologist. The didactic and clinical training programs may include, but need not be limited to, programs offered or designed either by schools of medicine or schools or colleges of optometry or both or some combination thereof.

The Board may prepare, administer, and grade appropriate examinations for the certification of optometrists to administer therapeutic pharmaceutical agents or may contract with a school of

medicine, school or college of optometry, or other institution or entity to develop, administer, and grade the examinations.

In order to maintain a current and appropriate list of therapeutic pharmaceuticals on the TPA-Formulary, current and appropriate treatment guidelines, and current and appropriate determinations of diseases and abnormal conditions of the eye and its adnexa that may be treated by TPA-certified optometrists, the Board may, from time to time, amend such regulations. Such regulations shall be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), except to any extent that they may be specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031; the Board's regulations shall, however, comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.). The Board shall, however, conduct a public hearing prior to making amendments to the TPA-Formulary, the treatment guidelines or the determinations of diseases and abnormal conditions of the eye and its adnexa that may be treated by TPA-certified optometrists. Thirty days prior to conducting such hearing, the Board shall give written notice by mail of the date, time, and place of the hearing to all currently TPA-certified optometrists and any other persons requesting to be notified of the hearings and publish notice of its intention to amend the list in the Virginia Register of Regulations. During the public hearing, interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any TPA-Formulary amendments. Proposed and final amendments of the list shall also be published, pursuant to § 2.2-4031, in the Virginia Register of Regulations. Final amendments to the TPA-Formulary shall become effective upon filing with the Registrar of Regulations. The TPA-Formulary shall be the inclusive list of the therapeutic pharmaceutical agents that a TPA-certified optometrist may prescribe.

B. To assist in the specification of the TPA-Formulary, there shall be a seven-member TPA-Formulary Committee, as follows: three Virginia TPA-certified optometrists to be appointed by the Board of Optometry, one pharmacist appointed by the Board of Pharmacy from among its licensees, two ophthalmologists appointed by the Board of Medicine from among its licensees, and the chairman who shall be appointed by the Board of Optometry from among its members. The ophthalmologists appointed by the Board of Medicine shall have demonstrated, through professional experience, knowledge of the optometric profession. In the event the Board of Pharmacy or the Board of Medicine fails to make appointments to the TPA-Formulary Committee within 30 days following the Board of Optometry's requesting such appointments, or within 30 days following any subsequent vacancy, the Board of Optometry shall appoint such members.

The TPA-Formulary Committee shall recommend to the Board those therapeutic pharmaceutical agents to be included on the TPA-Formulary for the treatment of diseases and abnormal conditions of the eye and its adnexa by TPA-certified optometrists.

1996, cc. 152, 158; 2004, c. 744.

§ 54.1-3224. Denial, etc., of TPA certification; disciplinary actions; summary suspension under certain circumstances

A. The Board of Optometry may deny, refuse to renew, revoke, or suspend any TPA-certificate issued to a TPA-certified optometrist, or applied for by a licensed optometrist in accordance with the provisions of this article, or may discipline or reprimand any certificate holder for violations of this chapter or the Board's regulations.

B. The Board may take action summarily to suspend a TPA-certified optometrist's certification under this section by means of a telephone conference call if, in the opinion of a majority of the Board, (i) a good faith effort to convene a regular meeting of the Board has failed and (ii) there is an imminent danger to the public health or safety which warrants this action.

1996, cc. 152, 158.

Chapter 33 - PHARMACY

Article 1 - GENERAL PROVISIONS

§ 54.1-3300. Definitions

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

"Board" means the Board of Pharmacy.

"Collaborative agreement" means a voluntary, written, or electronic arrangement between one pharmacist and his designated alternate pharmacists involved directly in patient care at a single physical location where patients receive services and (i) any person licensed to practice medicine, osteopathy, or podiatry together with any person licensed, registered, or certified by a health regulatory board of the Department of Health Professions who provides health care services to patients of such person licensed to practice medicine, osteopathy, or podiatry; (ii) a physician's office as defined in § 32.1-276.3, provided such collaborative agreement is signed by each physician participating in the collaborative practice agreement; (iii) any licensed physician assistant working under the supervision of a person licensed to practice medicine, osteopathy, or podiatry; or (iv) any licensed nurse practitioner working as part of a patient care team as defined in § 54.1-2900, involved directly in patient care which authorizes cooperative procedures with respect to patients of such practitioners. Collaborative procedures shall be related to treatment using drug therapy, laboratory tests, or medical devices, under defined conditions or limitations, for the purpose of improving patient outcomes. A collaborative agreement is not required for the management of patients of an inpatient facility.

"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.

"Pharmacist" means a person holding a license issued by the Board to practice pharmacy.

"Pharmacy" means every establishment or institution in which drugs, medicines, or medicinal chemicals are dispensed or offered for sale, or a sign is displayed bearing the word or words

"pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled," or any similar words intended to indicate that the practice of pharmacy is being conducted.

"Pharmacy intern" means a student currently enrolled in or a graduate of an approved school of pharmacy who is registered with the Board for the purpose of gaining the practical experience required to apply for licensure as a pharmacist.

"Pharmacy technician" means a person registered with the Board to assist a pharmacist under the pharmacist's supervision.

"Practice of pharmacy" means the personal health service that is concerned with the art and science of selecting, procuring, recommending, administering, preparing, compounding, packaging, and dispensing of drugs, medicines, and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on a prescription or otherwise legally dispensed or distributed, and shall include the proper and safe storage and distribution of drugs; the maintenance of proper records; the responsibility of providing information concerning drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease; and the management of patient care under the terms of a collaborative agreement as defined in this section.

"Supervision" means the direction and control by a pharmacist of the activities of a pharmacy intern or a pharmacy technician whereby the supervising pharmacist is physically present in the pharmacy or in the facility in which the pharmacy is located when the intern or technician is performing duties restricted to a pharmacy intern or technician, respectively, and is available for immediate oral communication.

Other terms used in the context of this chapter shall be defined as provided in Chapter 34 (§ 54.1-3400 et seq.) unless the context requires a different meaning.

Code 1950, §§ 54-399, 54-487; 1952, c. 451; 1958, c. 551, § 54-524.2; 1966, c. 193; 1968, c. 582; 1970, c. 650; 1971, Ex. Sess., c. 94; 1972, c. 798; 1975, c. 425; 1976, c. 14; 1977, c. 193; 1978, c. 833; 1979, c. 435; 1980, c. 150; 1988, c. 765; 1999, cc. 895, 1011; 2001, c. 317; 2002, c. 411; 2013, c. 192.

§ 54.1-3300.1. Participation in collaborative agreements; regulations to be promulgated by the Boards of Medicine and Pharmacy

A pharmacist and his designated alternate pharmacists involved directly in patient care may participate with (i) any person licensed to practice medicine, osteopathy, or podiatry together with any person licensed, registered, or certified by a health regulatory board of the Department of Health Professions who provides health care services to patients of such person licensed to practice medicine, osteopathy, or podiatry; (ii) a physician's office as defined in § 32.1-276.3, provided such collaborative agreement is signed by each physician participating in the collaborative practice agreement; (iii) any licensed physician assistant working under the supervision of a person licensed to practice medicine, osteopathy, or podiatry; or (iv) any licensed nurse practitioner

working as part of a patient care team as defined in § 54.1-2900, involved directly in patient care in collaborative agreements which authorize cooperative procedures related to treatment using drug therapy, laboratory tests, or medical devices, under defined conditions or limitations, for the purpose of improving patient outcomes. However, no person licensed to practice medicine, osteopathy, or podiatry shall be required to participate in a collaborative agreement with a pharmacist and his designated alternate pharmacists, regardless of whether a professional business entity on behalf of which the person is authorized to act enters into a collaborative agreement with a pharmacist and his designated alternate pharmacists.

No patient shall be required to participate in a collaborative procedure without such patient's consent. A patient who chooses to not participate in a collaborative procedure shall notify the prescriber of his refusal to participate in such collaborative procedure. A prescriber may elect to have a patient not participate in a collaborative procedure by contacting the pharmacist or his designated alternative pharmacists or by documenting the same on the patient's prescription.

Collaborative agreements may include the implementation, modification, continuation, or discontinuation of drug therapy pursuant to written or electronic protocols, provided implementation of drug therapy occurs following diagnosis by the prescriber; the ordering of laboratory tests; or other patient care management measures related to monitoring or improving the outcomes of drug or device therapy. No such collaborative agreement shall exceed the scope of practice of the respective parties. Any pharmacist who deviates from or practices in a manner inconsistent with the terms of a collaborative agreement shall be in violation of § 54.1-2902; such violation shall constitute grounds for disciplinary action pursuant to §§ 54.1-2400 and 54.1-3316.

Collaborative agreements may only be used for conditions which have protocols that are clinically accepted as the standard of care, or are approved by the Boards of Medicine and Pharmacy. The Boards of Medicine and Pharmacy shall jointly develop and promulgate regulations to implement the provisions of this section and to facilitate the development and implementation of safe and effective collaborative agreements between the appropriate practitioners and pharmacists. The regulations shall include guidelines concerning the use of protocols, and a procedure to allow for the approval or disapproval of specific protocols by the Boards of Medicine and Pharmacy if review is requested by a practitioner or pharmacist.

Nothing in this section shall be construed to supersede the provisions of § 54.1-3303.

1999, cc. 895, 1011; 2013, c. 192.

§ 54.1-3301. Exceptions

This chapter shall not be construed to:

1. Interfere with any legally qualified practitioner of dentistry, or veterinary medicine or any physician acting on behalf of the Virginia Department of Health or local health departments, in the compounding of his prescriptions or the purchase and possession of drugs as he may require;

2. Prevent any legally qualified practitioner of dentistry, or veterinary medicine or any prescriber, as defined in § 54.1-3401, acting on behalf of the Virginia Department of Health or local health departments, from administering or supplying to his patients the medicines that he deems proper under the conditions of § 54.1-3303 or from causing drugs to be administered or dispensed pursuant to §§ 32.1-42.1 and 54.1-3408, except that a veterinarian shall only be authorized to dispense a compounded drug, distributed from a pharmacy, when (i) the animal is his own patient, (ii) the animal is a companion animal as defined in regulations promulgated by the Board of Veterinary Medicine, (iii) the quantity dispensed is no more than a 72-hour supply, (iv) the compounded drug is for the treatment of an emergency condition, and (v) timely access to a compounding pharmacy is not available, as determined by the prescribing veterinarian;

3. Prohibit the sale by merchants and retail dealers of proprietary medicines as defined in Chapter 34 (§ 54.1-3400 et seq.) of this title;

4. Prevent the operation of automated drug dispensing systems in hospitals pursuant to Chapter 34 (§ 54.1-3400 et seq.) of this title;

5. Prohibit the employment of ancillary personnel to assist a pharmacist as provided in the regulations of the Board;

6. Interfere with any legally qualified practitioner of medicine, osteopathy, or podiatry from purchasing, possessing or administering controlled substances to his own patients or providing controlled substances to his own patients in a bona fide medical emergency or providing manufacturers' professional samples to his own patients;

7. Interfere with any legally qualified practitioner of optometry, certified or licensed to use diagnostic pharmaceutical agents, from purchasing, possessing or administering those controlled substances as specified in § 54.1-3221 or interfere with any legally qualified practitioner of optometry certified to prescribe therapeutic pharmaceutical agents from purchasing, possessing, or administering to his own patients those controlled substances as specified in § 54.1-3222 and the TPA formulary, providing manufacturers' samples of these drugs to his own patients, or dispensing, administering, or selling ophthalmic devices as authorized in § 54.1-3204;

8. Interfere with any physician assistant with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of controlled substances and devices that he is authorized, in compliance with the provisions of § 54.1-2952.1, to prescribe according to his practice setting and a written agreement with a physician or podiatrist;

9. Interfere with any licensed nurse practitioner with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of controlled substances and devices that he is authorized, in compliance with the provisions of § 54.1-2957.01, to prescribe according to his practice setting and a written or electronic agreement with a physician;

10. Interfere with any legally qualified practitioner of medicine or osteopathy participating in an indigent patient program offered by a pharmaceutical manufacturer in which the practitioner sends a prescription for one of his own patients to the manufacturer, and the manufacturer donates a stock bottle of the prescription drug ordered at no cost to the practitioner or patient. The practitioner may dispense such medication at no cost to the patient without holding a license to dispense from the Board of Pharmacy. However, the container in which the drug is dispensed shall be labeled in accordance with the requirements of § 54.1-3410, and, unless directed otherwise by the practitioner or the patient, shall meet standards for special packaging as set forth in § 54.1-3426 and Board of Pharmacy regulations. In lieu of dispensing directly to the patient, a practitioner may transfer the donated drug with a valid prescription to a pharmacy for dispensing to the patient. The practitioner or pharmacy participating in the program shall not use the donated drug for any purpose other than dispensing to the patient for whom it was originally donated, except as authorized by the donating manufacturer for another patient meeting that manufacturer's requirements for the indigent patient program. Neither the practitioner nor the pharmacy shall charge the patient for any medication provided through a manufacturer's indigent patient program pursuant to this subdivision. A participating pharmacy, including a pharmacy participating in bulk donation programs, may charge a reasonable dispensing or administrative fee to offset the cost of dispensing, not to exceed the actual costs of such dispensing. However, if the patient is unable to pay such fee, the dispensing or administrative fee shall be waived;

11. Interfere with any legally qualified practitioner of medicine or osteopathy from providing controlled substances to his own patients in a free clinic without charge when such controlled substances are donated by an entity other than a pharmaceutical manufacturer as authorized by subdivision 10. The practitioner shall first obtain a controlled substances registration from the Board and shall comply with the labeling and packaging requirements of this chapter and the Board's regulations; or

12. Prevent any pharmacist from providing free health care to an underserved population in Virginia who (i) does not regularly practice pharmacy in Virginia, (ii) holds a current valid license or certificate to practice pharmacy in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any pharmacist whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise

found to be in violation of applicable laws or regulations. However, the Board shall allow a pharmacist who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state.

This section shall not be construed as exempting any person from the licensure, registration, permitting and record keeping requirements of this chapter or Chapter 34 of this title.

Code 1950, § 54-481; 1966, c. 171; 1968, c. 582, § 54-524.53; 1970, c. 650, § 54-524.54; 1972, c. 798; 1988, cc. 765, 904; 1989, c. 510; 1998, c. 101; 1999, cc. 745, 750; 2000, c. 924; 2001, c. 465; 2002, cc. 666, 707, 740; 2003, c. 794; 2008, c. 674; 2009, cc. 101, 353, 761; 2012, c. 213; 2014, c. 147.

§ 54.1-3302. Restrictions on practitioners of the healing arts

A practitioner of the healing arts shall not sell or dispense controlled substances except as provided in §§ 54.1-2914 and 54.1-3304.1. Such exceptions shall extend only to his own patients unless he is licensed to practice pharmacy.

Code 1950, § 54-481; 1966, c. 171; 1968, c. 582, § 54-524.53; 1970, c. 650; 1972, c. 798; 1988, c. 765; 1989, c. 510 .

§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only

A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances, or by a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32. The prescription shall be issued for a medicinal or therapeutic purpose and may be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship.

For purposes of this section, a bona fide practitioner-patient-pharmacist relationship is one in which a practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for a medicinal or therapeutic purpose within the course of his professional practice. In addition, a bona fide practitioner-patient relationship means that the practitioner shall (i) ensure that a medical or drug history is obtained; (ii) provide information to the patient about the benefits and risks of the drug being prescribed; (iii) perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects.

For the purpose of prescribing a Schedule VI controlled substance to a patient via telemedicine services as defined in § 38.2-3418.16, a prescriber may establish a bona fide practitioner-patient relationship by an examination through face-to-face interactive, two-way, real-time communications services or store-and-forward technologies when all of the following conditions are met: (a) the patient has provided a medical history that is available for review by the prescriber; (b) the prescriber obtains an updated medical history at the time of prescribing; (c) the prescriber makes a diagnosis at the time of prescribing; (d) the prescriber conforms to the standard of care expected of in-person care as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition; (e) the prescriber is actively licensed in the Commonwealth and authorized to prescribe; (f) if the patient is a member or enrollee of a health plan or carrier, the prescriber has been credentialed by the health plan or carrier as a participating provider and the diagnosing and prescribing meets the qualifications for reimbursement by the health plan or carrier pursuant to § 38.2-3418.16; and (g) upon request, the prescriber provides patient records in a timely manner in accordance with the provisions of § 32.1-127.1:03 and all other state and federal laws and regulations. Nothing in this paragraph shall permit a prescriber to establish a bona fide practitioner-patient relationship for the purpose of prescribing a Schedule VI controlled substance when the standard of care dictates that an in-person physical examination is necessary for diagnosis. Nothing in this paragraph shall apply to: (1) a prescriber providing on-call coverage per an agreement with another prescriber or his prescriber's professional entity or employer; (2) a prescriber consulting with another prescriber regarding a patient's care; or (3) orders of prescribers for hospital out-patients or in-patients.

Any practitioner who prescribes any controlled substance with the knowledge that the controlled substance will be used otherwise than medicinally or for therapeutic purposes shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the distribution or possession of controlled substances.

B. In order to determine whether a prescription that appears questionable to the pharmacist results from a bona fide practitioner-patient relationship, the pharmacist shall contact the prescribing practitioner or his agent and verify the identity of the patient and name and quantity of the drug prescribed. The person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of controlled substances.

No prescription shall be filled unless there is a bona fide practitioner-patient-pharmacist relationship. A prescription not issued in the usual course of treatment or for authorized research is not a valid prescription.

C. Notwithstanding any provision of law to the contrary and consistent with recommendations of the Centers for Disease Control and Prevention or the Department of Health, a practitioner may

prescribe Schedule VI antibiotics and antiviral agents to other persons in close contact with a diagnosed patient when (i) the practitioner meets all requirements of a bona fide practitioner-patient relationship, as defined in subsection A, with the diagnosed patient; (ii) in the practitioner's professional judgment, the practitioner deems there is urgency to begin treatment to prevent the transmission of a communicable disease; (iii) the practitioner has met all requirements of a bona fide practitioner-patient relationship, as defined in subsection A, for the close contact except for the physical examination required in clause (iii) of subsection A; and (iv) when such emergency treatment is necessary to prevent imminent risk of death, life-threatening illness, or serious disability.

D. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine authorized to issue such prescription if the prescription complies with the requirements of this chapter and the Drug Control Act (§ 54.1-3400 et seq.).

E. A licensed nurse practitioner who is authorized to prescribe controlled substances pursuant to § 54.1-2957.01 may issue prescriptions or provide manufacturers' professional samples for controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

F. A licensed physician assistant who is authorized to prescribe controlled substances pursuant to § 54.1-2952.1 may issue prescriptions or provide manufacturers' professional samples for controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

G. A TPA-certified optometrist who is authorized to prescribe controlled substances pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 may issue prescriptions in good faith or provide manufacturers' professional samples to his patients for medicinal or therapeutic purposes within the scope of his professional practice for the drugs specified on the TPA-Formulary, established pursuant to § 54.1-3223, which shall be limited to (i) analgesics included on Schedule II controlled substances as defined in § 54.1-3448 of the Drug Control Act (§ 54.1-3400 et seq.) consisting of hydrocodone in combination with acetaminophen; (ii) oral analgesics included in Schedules III through VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), which are appropriate to relieve ocular pain; (iii) other oral Schedule VI controlled substances, as defined in § 54.1-3455 of the Drug Control Act, appropriate to treat diseases and abnormal conditions of the human eye and its adnexa; (iv) topically applied Schedule VI drugs, as defined in § 54.1-3455 of the Drug Control Act; and (v) intramuscular administration of epinephrine for treatment of emergency cases of anaphylactic shock.

H. The requirement for a bona fide practitioner-patient relationship shall be deemed to be satisfied by a member or committee of a hospital's medical staff when approving a standing order or protocol for the administration of influenza vaccinations and pneumococcal vaccinations in a hospital in compliance with § 32.1-126.4.

1983, c. 528, § 54-524.50:1; 1985, c. 336; 1988, c. 765; 1991, cc. 519, 524; 1992, c. 793; 1996, cc. 152, 158, 408; 1997, c. 806; 1998, c. 101; 1999, c. 745; 2000, cc. 882, 924; 2001, c. 465; 2003, c. 639; 2004, c. 744; 2006, c. 432; 2010, c. 74; 2015, cc. 32, 115; 2016, c. 86.

§ 54.1-3304. Licensing of physicians to dispense drugs; renewals

For good cause shown, the Board may grant a license to any physician licensed under the laws of Virginia authorizing such physician to dispense drugs to persons to whom a pharmaceutical service is not reasonably available. This license may be renewed annually. Any physician or osteopath so licensed shall be governed by the regulations of the Board of Pharmacy when applicable.

1976, c. 614, § 54-524.34:1; 1980, c. 288; 1988, c. 765.

§ 54.1-3304.1. Authority to license and regulate practitioners; permits

A. The Board of Pharmacy shall have the authority to license and regulate the dispensing of controlled substances by practitioners of the healing arts. Except as prescribed in this chapter or by Board regulations, it shall be unlawful for any practitioner of the healing arts to dispense controlled substances within the Commonwealth unless licensed by the Board to sell controlled substances.

B. Facilities from which practitioners of the healing arts dispense controlled substances shall obtain a permit from the Board and comply with the regulations for practitioners of the healing arts to sell controlled substances. Facilities in which only one practitioner of the healing arts is licensed by the Board to sell controlled substances shall be exempt from fees associated with obtaining and renewing such permit.

1988, c. 904, § 54-524.34:2; 1989, c. 510; 2015, c. 117.

Article 2 - BOARD OF PHARMACY

§ 54.1-3305. Board; membership; terms; meetings; quorum; officers

The Board of Pharmacy shall consist of ten members, as follows: eight licensed pharmacists who are graduates of an approved school or college of pharmacy and two citizen members. The terms of office of the members shall be four years.

The Board shall meet at least annually at such times and places, and upon such notice as the Board may determine and as its business may require. A majority of the members of the Board shall constitute a quorum for the transaction of business.

The Board shall annually elect from its members a chairman.

There shall be an executive director for the Board of Pharmacy who shall be licensed or eligible for licensure in the Commonwealth as a pharmacist.

Code 1950, §§ 54-404, 54-405, 54-410, 54-412; 1958, c. 551; 1970, c. 650, §§ 54-524.5, 54-524.11; 1976, c. 614, § 54-524.13; 1986, c. 464, § 54-524.6; 1988, cc. 42, 765; 1994, c. 283; 2005, c. 70.

§ 54.1-3306. Nominations

Nominations may be made for each professional vacancy from a list of at least three names submitted to the Governor by the Virginia Pharmaceutical Association. The Governor may notify the Association of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees of the Association.

Code 1950, § 54-406; 1958, c. 551; 1970, c. 650, § 54-524.7; 1986, c. 464; 1988, c. 765.

§ 54.1-3307. Specific powers and duties of Board

A. The Board shall regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or disposal of drugs and devices. The Board shall also control the character and standard of all drugs, cosmetics and devices within the Commonwealth, investigate all complaints as to the quality and strength of all drugs, cosmetics, and devices and take such action as may be necessary to prevent the manufacturing, dispensing, selling, distributing, processing, compounding and disposal of such drugs, cosmetics and devices that do not conform to the requirements of law.

The Board's regulations shall include criteria for:

1. Maintenance of the quality, quantity, integrity, safety and efficacy of drugs or devices distributed, dispensed or administered.

2. Compliance with the prescriber's instructions regarding the drug, its quantity, quality and directions for use.

3. Controls and safeguards against diversion of drugs or devices.

4. Maintenance of the integrity of, and public confidence in, the profession and improving the delivery of quality pharmaceutical services to the citizens of Virginia.

5. Maintenance of complete records of the nature, quantity or quality of drugs or substances distributed or dispensed, and of all transactions involving controlled substances or drugs or devices so as to provide adequate information to the patient, the practitioner or the Board.

6. Control of factors contributing to abuse of legitimately obtained drugs, devices, or controlled substances.

7. Promotion of scientific or technical advances in the practice of pharmacy and the manufacture and distribution of controlled drugs, devices or substances.

8. Impact on costs to the public and within the health care industry through the modification of mandatory practices and procedures not essential to meeting the criteria set out in subdivisions 1 through 7 of this section.

9. Such other factors as may be relevant to, and consistent with, the public health and safety and the cost of rendering pharmacy services.

B. The Board may collect and examine specimens of drugs, devices and cosmetics that are manufactured, distributed, stored or dispensed in the Commonwealth.

Code 1950, §§ 54-415, 54-416.1; 1954, c. 396; 1958, c. 551, § 54-524.16; 1970, c. 650, § 54-524.18; 1972, c. 798; 1980, c. 288; 1988, c. 765; 1995, c. 529; 1996, cc. 37, 407; 2005, c. 777; 2006, c. 632; 2016, c. 221.

§ 54.1-3307.1. Repealed

Repealed by Acts 1997, c. 206.

§ 54.1-3307.2. Approval of innovative programs

A. Any person who proposes to use a process or procedure related to the dispensing of drugs or devices or to the practice of pharmacy not specifically authorized by Chapter 33 (§ 54.1-3300 et seq.) of this title or by a regulation of the Board of Pharmacy may apply to the Board for approval to use such process or procedure. The application under this section may only include new processes or procedures, within the current scope of the practice of pharmacy, that relate to the form or format of prescriptions, the manner of transmitting prescriptions or prescription information, the manner of required recordkeeping, the use of unlicensed ancillary personnel in the dispensing process, and the use of new technologies in the dispensing process. The authority granted the Board under this section shall not authorize expansion of the current scope of practice for pharmacists and shall not interfere with the requirement that pharmacists only dispense drugs in accordance with instructions from a prescriber, as defined in § 54.1-3401.

B. The application to the Board shall address safety to the public regarding the new process or procedure, any potential benefit to the public, promotion of scientific or technical advances in the practice of pharmacy, compliance with prescriber's instructions for any drug dispensed, any impact the new process may have on the potential for diversion of drugs, maintenance in the integrity of and public confidence in the profession of pharmacy and of the drugs dispensed, impact on cost to the public and within the health care industry, means of monitoring the new process or procedure for any negative outcomes or other problems, and the reporting of such outcomes to the Board.

C. An informal conference committee, composed of not less than two members of the Board and in accordance with § 2.2-4019, shall receive and review the application and any investigative report requested by the committee. The committee shall have the authority to grant or deny approval of the request. The committee may grant approval of the request unconditionally or may impose conditions on the approval as follows:

1. The committee may grant approval for a finite period of time, after which time the applicant must provide additional information as requested by the committee in order to continue the approval;

2. The committee may require that ongoing reports concerning performance and problems be submitted; or

3. The committee may impose such other conditions as it deems necessary to provide assurance of public health and safety and accountability for controlled substances.

D. If an applicant does not agree with the decision of the committee, the applicant may request a hearing before the Board or a panel of the Board, in accordance with § 2.2-4020.

E. Application under this section shall be on a form provided by the Board and shall be accompanied by a fee determined by the Board.

2000, c. 876.

§ 54.1-3307.3. Waiver of requirements; declared disaster or state of emergency

When the Governor has declared a disaster or a state of emergency pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 and it is necessary to permit the provision of needed drugs, devices, and pharmacy services to the citizens of the Commonwealth, the Board may waive the requirements of this chapter, the Drug Control Act (§ 54.1-3400 et seq.), and the Board's regulations governing the practice of pharmacy (18VAC110-20-10 et seq.). However, the Board shall not authorize the administering or dispensing of controlled substances by persons whose scope of practice does not include such authority.

2003, c. 794.

§ 54.1-3308. Power of inspection

The members of the Board and their duly authorized agents shall have the power to inspect in a lawful manner the drugs, cosmetics and devices which are manufactured, stored or dispensed in the Commonwealth. For this purpose the Board shall have the right to enter and inspect during business hours any pharmacy, or any other place in Virginia where drugs, cosmetics or devices are manufactured, stored or dispensed. The Board shall report any evidence of violation of the provisions of this chapter or Chapter 34 (§ 54.1-3400 et seq.) of this title by practitioners for action to the appropriate licensing board. The report shall constitute a pending complaint upon which the appropriate licensing board shall initiate action within thirty days.

Code 1950, § 54-417; 1958, c. 551; 1968, c. 582, § 54-524.19; 1970, c. 650; 1972, c. 798; 1976, c. 614; 1988, c. 765.

§ 54.1-3309. Enforcement

A. The Board or its agents are authorized upon presenting appropriate credentials and a written notice as to the purpose of the inspection to the owner, operator or agent in charge to enter at reasonable times any factory, warehouse or establishment in which drugs, devices or cosmetics are

manufactured, processed, packed or held for introduction into commerce or to enter any vehicle being used to transport or hold such drugs, devices or cosmetics.

The Board or its agents are authorized to inspect such factory, warehouse, establishment or vehicle and all pertinent equipment, materials, containers and labeling.

In the case of any factory, warehouse, establishment or consulting laboratory in which prescription drugs are manufactured, processed, packed or held, the inspection shall extend to all things, including records, files, papers, processes, controls and facilities, bearing on compliance with Chapter 34 (§ 54.1-3400 et seq.) of this title.

No inspection authorized for prescription drugs shall extend to financial data, sales data other than shipment data, pricing data, personnel data, other than data as to qualifications of technical and professional personnel performing functions subject to this chapter, and research data.

Each inspection shall be commenced and completed with reasonable promptness. The Board or its agents shall have access to copy all records of carriers in commerce showing the movement in commerce of any drug, device, or cosmetic and the quantity, shipper and consignee. The evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained; and carriers shall not be subject to the provisions of Chapter 34 by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business.

B. If the authorized agent inspecting a factory, warehouse or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples.

1970, c. 650, § 54-524.99; 1988, c. 765.

Article 3 - LICENSURE OF PHARMACISTS

§ 54.1-3310. Unlawful to practice without license

Except as prescribed in this chapter or by Board regulations it shall be unlawful for any person to practice pharmacy, or to engage in, carry on, or be employed in the dispensing, or compounding of drugs within this Commonwealth unless licensed by the Board as a pharmacist. The possession by any person in any place of a miscellaneous stock of drugs shall be prima facie evidence that such person is practicing pharmacy.

Code 1950, § 54-475; 1970, c. 650; 1976, c. 614, § 54-524.48; 1988, c. 765.

§ 54.1-3311. Application and examination

Every person desiring to be licensed as a pharmacist shall file with the executive director of the Board an application, verified under oath, setting forth the name and age of the applicant, the place or places at which, and the time spent in, the study of pharmacy, and other information required by the Board.

The Board shall conduct examinations of applicants for licensure at least twice a calendar year.

Code 1950, §§ 54-420, 54-423; 1958, c. 551; 1970, c. 650, §§ 54-524.23, 54-524.25; 1972, c. 798; 1976, c. 614; 1980, c. 288; 1988, c. 765.

§ 54.1-3312. Qualifications of pharmacist; approved school of pharmacy defined

A. In order to be licensed as a pharmacist within the meaning of this chapter, an applicant shall present to the Board satisfactory evidence that he:

1. Is at least eighteen years of age;

2. Is of good moral character;

3. Is a graduate of a school of pharmacy approved by the Board, or a foreign college of pharmacy, if the graduate has satisfactorily completed (i) a college of pharmacy equivalency examination program approved by the Board and (ii) written and oral communication ability tests of the English language approved by the Board;

4. Has had a period of practical experience in the United States in accordance with the Board's regulations; however, such requirement shall not exceed twelve months; and

5. Has passed the examination prescribed by the Board.

B. As used in this article, an approved school of pharmacy shall be an institution which meets the minimum standards of the American Council on Pharmaceutical Education and appears on the Council's list of schools of pharmacy as published annually.

Code 1950, § 54-422; 1952, c. 230; 1958, c. 551, § 54-524.21; 1970, c. 650; 1972, cc. 798, 824; 1974, c. 686; 1976, c. 614; 1988, c. 765; 1994, c. 657.

§ 54.1-3313. Licensure by endorsement

The Board of Pharmacy may issue a license by endorsement, without examination, except as provided in this section, to practice pharmacy to persons who hold a current and unrestricted license as pharmacists in other states, the District of Columbia or possessions or territories of the United States. The applicant for such license shall present satisfactory evidence of the qualifications equal to those required of applicants for licensure by examination in Virginia and that he was licensed by examination by the board of pharmacy in such other jurisdiction. The standard of competence required in such other jurisdiction shall not be lower than that required in Virginia.

Prior to the issuance of a license, the Board may require applicants for licensure by endorsement to pass an examination on Virginia drug laws and Board of Pharmacy regulations equal to that required of applicants for licensure by examination in Virginia.

Code 1950, § 54-423.1; 1958, c. 551; 1970, c. 650, § 54-524.26; 1976, c. 614; 1980, c. 288; 1988, cc. 251, 765; 1990, c. 269 .

§ 54.1-3314. Display of license

Every person licensed to practice as a pharmacist must at all times display his license conspicuously in the place in which he regularly practices.

Code 1950, § 54-431; 1958, c. 551; 1970, c. 650, § 54-524.30; 1988, c. 765.

§ 54.1-3314.1. Continuing education requirements; exemptions; extensions; procedures; out-of-state licensees; nonpractice licenses

A. Each pharmacist shall have obtained a minimum of 15 continuing education hours of pharmaceutical education through an approved continuing pharmaceutical education program during the year immediately preceding his license renewal date.

B. An approved continuing pharmaceutical education program shall be any program approved by the Board.

C. Pharmacists who have been initially licensed by the Board during the one year preceding the license renewal date shall not be required to comply with the requirement on the first license renewal date that would immediately follow.

D. The Board may grant an exemption from the continuing education requirement if the pharmacist presents evidence that failure to comply was due to circumstances beyond the control of the pharmacist.

E. Upon the written request of a pharmacist, the Board may grant an extension of one year in order for a pharmacist to fulfill the continuing education requirements for the period of time in question. Such extension shall not relieve the pharmacist of complying with the continuing education requirement for the current period.

F. The pharmacist shall attest to the fact that he has completed the continuing education requirements as specified by the Board.

G. The following shall apply to the requirements for continuing pharmaceutical education:

1. The provider of an approved continuing education program shall issue to each pharmacist who has successfully completed a program certification that the pharmacist has completed a specified number of hours.

2. The certificates so issued to the pharmacist shall be maintained by the pharmacist for a period of two years following the renewal of his license.

3. The pharmacist shall provide the Board, upon request, with certification of completion of continuing education programs in a manner to be determined by the Board.

H. Pharmacists who are also licensed in other states and who have obtained a minimum of fifteen hours of approved continuing education requirements of such other states need not obtain additional hours.

I. The Board shall provide for an inactive status for those pharmacists who do not wish to practice in Virginia. The Board shall require upon request for change from inactive to active status proof of continuing education hours as specified in regulations. No person shall practice in Virginia unless he holds a current active license.

J. As part of the annual 15-hour requirement, the Board may require up to two hours of continuing education in a specific subject area. If the Board designates a subject area for continuing education, it shall publish such requirement no later than January 1 of the calendar year for which the specific continuing education is required.

1992, c. 868; 2008, c. 672.

§ 54.1-3315. Repealed

Repealed by Acts 2007, c. 662, cl. 2.

§ 54.1-3316. Refusal; revocation; suspension and denial

The Board may refuse to admit an applicant to any examination; refuse to issue a license, permit, certificate, or registration to any applicant; or reprimand, impose a monetary penalty, place on probation, impose such terms as it may designate, suspend for a stated period of time or indefinitely, or revoke any license, permit, certificate, or registration if it finds that an applicant or a person holding a license, permit, certificate, or registration:

1. Has been negligent in the practice of pharmacy or in any activity requiring a license, permit, certificate, or registration from the Board;

2. Has engaged in unprofessional conduct specified in regulations promulgated by the Board;

3. Has become incompetent to practice pharmacy or to engage in any activity requiring a license, permit, certificate, or registration from the Board because of a mental or physical condition;

4. Uses drugs or alcohol to the extent that he is rendered unsafe to practice pharmacy or to engage in any activity requiring a license, permit, certificate, or registration from the Board;

5. Has engaged in or attempted any fraud or deceit in connection with the practice of pharmacy or any activity requiring a license, permit, certificate, or registration from the Board, including any application to the Board for such license, permit, certificate, or registration;

6. Has engaged in activities beyond the scope of a license, permit, certificate, or registration or has assisted or allowed unlicensed persons to engage in the practice of pharmacy or perform duties related to the practice of pharmacy for which a license or registration is required;

7. Has violated or cooperated with others in violating any provisions of law or regulation relating to practice of pharmacy or any activity requiring a license, permit, certificate, or registration from the Board;

8. Has had revoked or suspended any registration issued by the United States Drug Enforcement Administration or other federal agency that is necessary to conduct an activity also requiring a license, permit, certificate, or registration from the Board;

9. Has engaged in the theft or diversion of controlled substances or has violated any federal drug law or any drug law of Virginia or of another state;

10. Has had denied, suspended, or revoked in any other state a license to practice pharmacy or any license, permit, certificate, or registration necessary to conduct an activity requiring a license, permit, certificate, or registration from the Board, or has surrendered in another state such license, permit, certificate, or registration;

11. Has been convicted of any felony or of any misdemeanor involving moral turpitude;

12. Has issued or published statements intended to deceive or defraud about his professional service or an activity requiring a license, permit, certificate, or registration from the Board;

13. Has conducted his practice, or activity requiring a license, permit, certificate, or registration from the Board in such a manner as to be a danger to the health and welfare of the public; or

14. Has failed to comply with requirements of this chapter or any regulation of the Board relating to continuing education.

1972, c. 798, § 54-524.22:1; 1976, c. 614; 1977, c. 86; 1982, c. 401; 1988, c. 765; 1992, c. 868; 1994, c. 296; 2007, c. 662.

§ 54.1-3317. Repealed

Repealed by Acts 1997, c. 556.

§ 54.1-3318. Notification of revocation

Whenever the Board revokes the license of any pharmacist, it shall notify the licensee of such action, and he shall immediately deliver his license to the Board or its representative.

Code 1950, § 54-427; 1970, c. 650, § 54-524.28; 1988, c. 765.

§ 54.1-3319. Counseling

A. A pharmacist shall conduct a prospective drug review before each new prescription is dispensed or delivered to a patient or a person acting on behalf of the patient. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions, including serious interactions with nonprescription or over-the-counter drugs, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse. A pharmacist may conduct a prospective drug review before refilling a prescription to the extent the pharmacist deems appropriate in his professional judgment.

B. A pharmacist shall offer to counsel any person who presents a new prescription for filling. The offer to counsel may be made in any manner the pharmacist deems appropriate in his professional judgment, and may include any one or a combination of the following:

1. Face-to-face communication with the pharmacist or the pharmacist's designee;

2. A sign posted in such a manner that it can be seen by patients;

3. A notation affixed to or written on the bag in which the prescription is to be delivered;

4. A notation contained on the prescription container; or

5. By telephone.

For the purposes of medical assistance and other third-party reimbursement or payment programs, any of the above methods, or a combination thereof, shall constitute an acceptable offer to provide counseling, except to the extent this subsection is inconsistent with regulations promulgated by the federal Health Care Financing Administration governing 42 U.S.C. § 1396r-8 (g)(2)(A)(ii). A pharmacist may offer to counsel any person who receives a refill of a prescription to the extent deemed appropriate by the pharmacist in his professional judgment.

C. If the offer to counsel is accepted, the pharmacist shall counsel the person presenting the prescription to the extent the pharmacist deems appropriate in his professional judgment. Such counseling shall be performed by the pharmacist himself and may, but need not, include the following:

1. The name and description of the medication;

2. The dosage form, dosage, route of administration, and duration of drug therapy;

3. Special directions and precautions for preparation, administration, and use by the patient;

4. Common adverse or severe side effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

5. Techniques for self-monitoring drug therapy;

6. Proper storage;

7. Prescription refill information; and

8. Action to be taken in the event of a missed dose.

Nothing in this section shall be construed as requiring a pharmacist to provide counseling when the person presenting the prescription fails to accept the pharmacist's offer to counsel. If the prescription is delivered to a person residing outside of the local telephone calling area of the pharmacy, the pharmacist shall either provide a toll-free telephone number or accept reasonable collect calls from such person.

D. Reasonable efforts shall be made to obtain, record, and maintain the following patient information generated at the individual pharmacy:

1. Name, address, telephone number, date of birth or age, and gender;

2. Individual history where significant, including known allergies and drug reactions, and a comprehensive list of medications and relevant devices; and

3. Any additional comments relevant to the patient's drug use, including any failure to accept the pharmacist's offer to counsel.

Such information may be recorded in the patient's manual or electronic profile, or in the prescription signature log, or in any other system of records and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of

counseling. The absence of any record of a failure to accept the pharmacist's offer to counsel shall be presumed to signify that such offer was accepted and that such counseling was provided.

E. This section shall not apply to any drug dispensed to an inpatient of a hospital or nursing home, except to the extent required by regulations promulgated by the federal Health Care Financing Administration implementing 42 U.S.C. § 1396r-8 (g)(2)(A).

1992, c. 689 .

§ 54.1-3320. Acts restricted to pharmacists

A. Within the practice of pharmacy as defined in § 54.1-3300, the following acts shall be performed by pharmacists, except as provided in subsection B:

1. The review of a prescription, in conformance with this chapter and Chapter 34 (§ 54.1-3400 et seq.) of this title and with current practices in pharmacy, for its completeness, validity, safety, and drug-therapy appropriateness, including, but not limited to, interactions, contraindications, adverse effects, incorrect dosage or duration of treatment, clinical misuse or abuse, and non-compliance and duplication of therapy;

2. The receipt of an oral prescription from a practitioner or his authorized agent;

3. The conduct of a prospective drug review and counseling as required by § 54.1-3319 prior to the dispensing or refilling of any prescription;

4. The provision of information to the public or to a practitioner concerning the therapeutic value and use of drugs in the treatment and prevention of disease;

5. The communication with the prescriber, or the prescriber's agent, involving any modification other than refill authorization of a prescription or of any drug therapy, resolution of any drug therapy problem, or the substitution of any drug prescribed;

6. The verification of the accuracy of a completed prescription prior to dispensing the prescription;

7. The supervision of pharmacy interns and pharmacy technicians; and

8. Any other activity required by regulation to be performed by a pharmacist.

B. A pharmacy intern may engage in the acts to be performed by a pharmacist as set forth in subsection A or the Drug Control Act (§ 54.1-3400 et seq.) for the purpose of obtaining practical experience required for licensure as a pharmacist, if the supervising pharmacist is directly monitoring these activities.

C. A registered pharmacy technician, working under the direct supervision of a qualified nuclear pharmacist, as defined by regulations of the Board, may accept oral prescriptions for diagnostic, nonpatient specific radiopharmaceuticals in accordance with subsection C of § 54.1-3410.1.

D. Consistent with patient safety, a pharmacist shall exercise sole authority in determining the maximum number of pharmacy technicians that he shall supervise; however, no pharmacist shall supervise more pharmacy technicians than allowed by Board regulations.

2001, c. 317; 2005, c. 403; 2006, c. 626; 2010, c. 90.

Article 4 - REGISTRATION OF PHARMACY TECHNICIANS

§ 54.1-3321. Registration of pharmacy technicians

A. No person shall perform the duties of a pharmacy technician without first being registered as a pharmacy technician with the Board. Upon being registered with the Board as a pharmacy technician, the following tasks may be performed:

1. The entry of prescription information and drug history into a data system or other record keeping system;

2. The preparation of prescription labels or patient information;

3. The removal of the drug to be dispensed from inventory;

4. The counting, measuring, or compounding of the drug to be dispensed;

5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;

6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process;

7. The acceptance of refill authorization from a prescriber or his authorized agency, so long as there is no change to the original prescription; and

8. The performance of any other task restricted to pharmacy technicians by the Board's regulations.

B. To be registered as a pharmacy technician, a person shall submit satisfactory evidence that he is of good moral character and has satisfactorily completed a training program and examination that meet the criteria approved by the Board in regulation or that he holds current certification from the Pharmacy Technician Certification Board.

C. A pharmacy intern may perform the duties set forth for pharmacy technicians in subsection A when registered with the Board for the purpose of gaining the practical experience required to apply for licensure as a pharmacist.

D. In addition, a person enrolled in an approved training program for pharmacy technicians may engage in the acts set forth in subsection A for the purpose of obtaining practical experience required for registration as a pharmacy technician, so long as such activities are directly monitored by a supervising pharmacist.

E. The Board shall promulgate regulations establishing requirements for evidence of continued competency as a condition of renewal of a registration as a pharmacy technician.

F. The Board shall waive the initial registration fee and the first examination fee for the Board-approved examination for a pharmacy technician applicant who works as a pharmacy technician exclusively in a free clinic pharmacy. If such applicant fails the examination, he shall be responsible for any subsequent fees to retake the examination. A person registered pursuant to this subsection shall be issued a limited-use registration. A pharmacy technician with a limited-use registration shall not perform pharmacy technician tasks in any setting other than a free clinic pharmacy. The Board shall also waive renewal fees for such limited-use registrations. A pharmacy technician with a limited-use registration may convert to an unlimited registration by paying the current renewal fee.

2001, c. 317; 2004, c. 47.

§ 54.1-3322. Repealed
Repealed by Acts 2007, c. 662, cl. 2.

Chapter 34 - DRUG CONTROL ACT

Article 1 - GENERAL PROVISIONS

§ 54.1-3400. Citation
This chapter may be cited as "The Drug Control Act."

1970, c. 650, § 54-524.1; 1988, c. 765.

§ 54.1-3401. Definitions
As used in this chapter, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone.

"Animal" means any nonhuman animate being endowed with the power of voluntary action.

"Automated drug dispensing system" means a mechanical or electronic system that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of all transaction information, to provide security and accountability for such drugs.

"Biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein other than a chemically synthesized polypeptide, or analogous product, or arsphenamine or any derivative of arsphenamine or any other trivalent organic arsenic compound, applicable to the prevention, treatment, or cure of a disease or condition of human beings.

"Biosimilar" means a biological product that is highly similar to a specific reference biological product, notwithstanding minor differences in clinically inactive compounds, such that there are no clinically meaningful differences between the reference biological product and the biological product that has been licensed as a biosimilar pursuant to 42 U.S.C. § 262(k) in terms of safety, purity, and potency of the product.

"Board" means the Board of Pharmacy.

"Bulk drug substance" means any substance that is represented for use, and that, when used in the compounding, manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug; however, "bulk drug substance" shall not include intermediates that are used in the synthesis of such substances.

"Change of ownership" of an existing entity permitted, registered, or licensed by the Board means (i) the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a partnership, or change in partnership composition; (iii) the acquisition or disposal of 50 percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the expiration or forfeiture of a corporation's charter.

"Co-licensed partner" means a person who, with at least one other person, has the right to engage in the manufacturing or marketing of a prescription drug, consistent with state and federal law.

"Compounding" means the combining of two or more ingredients to fabricate such ingredients into a single preparation and includes the mixing, assembling, packaging, or labeling of a drug or device (i) by a pharmacist, or within a permitted pharmacy, pursuant to a valid prescription issued for a medicinal or therapeutic purpose in the context of a bona fide practitioner-patient-pharmacist relationship, or in expectation of receiving a valid prescription based on observed historical patterns of prescribing and dispensing; (ii) by a practitioner of medicine, osteopathy, podiatry,

dentistry, or veterinary medicine as an incident to his administering or dispensing, if authorized to dispense, a controlled substance in the course of his professional practice; or (iii) for the purpose of, or as incident to, research, teaching, or chemical analysis and not for sale or for dispensing. The mixing, diluting, or reconstituting of a manufacturer's product drugs for the purpose of administration to a patient, when performed by a practitioner of medicine or osteopathy licensed under Chapter 29 (§ 54.1-2900 et seq.), a person supervised by such practitioner pursuant to subdivision A 6 or 19 of § 54.1-2901, or a person supervised by such practitioner or a licensed nurse practitioner or physician assistant pursuant to subdivision A 4 of § 54.1-2901 shall not be considered compounding.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI of this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 3.2 or Title 4.1. The term "controlled substance" includes a controlled substance analog that has been placed into Schedule I or II by the Board pursuant to the regulatory authority in subsection D of § 54.1-3443.

"Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and either (i) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II or (ii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II. "Controlled substance analog" does not include (a) any substance for which there is an approved new drug application as defined under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355) or that is generally recognized as safe and effective pursuant to §§ 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 351, 352, and 353) and 21 C.F.R. Part 330; (b) with respect to a particular person, any substance for which an exemption is in effect for investigational use for that person under § 505 of the federal Food, Drug, and Cosmetic Act to the extent that the conduct with respect to that substance is pursuant to such exemption; or (c) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

"DEA" means the Drug Enforcement Administration, U.S. Department of Justice, or its successor agency.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by this chapter, whether or not there exists an agency relationship.

"Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals or to affect the structure or any function of the body of man or animals.

"Dialysis care technician" or "dialysis patient care technician" means an individual who is certified by an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) and who, under the supervision of a licensed physician, nurse practitioner, physician assistant, or a registered nurse, assists in the care of patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility.

"Dialysis solution" means either the commercially available, unopened, sterile solutions whose purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal dialysis, or commercially available solutions whose purpose is to be used in the performance of hemodialysis not to include any solutions administered to the patient intravenously.

"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. However, dispensing shall not include the transportation of drugs mixed, diluted, or reconstituted in accordance with this chapter to other sites operated by such practitioner or that practitioner's medical practice for the purpose of administration of such drugs to patients of the practitioner or that practitioner's medical practice at such other sites. For practitioners of medicine or osteopathy, "dispense" shall only include the provision of drugs by a practitioner to patients to take with them away from the practitioner's place of practice.

"Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes.

"Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or animals; (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii); or (v) a biological product. "Drug" does not include devices or their components, parts, or accessories.

"Drug product" means a specific drug in dosage form from a known source of manufacture, whether by brand or therapeutically equivalent drug product name.

"Electronic transmission prescription" means any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted

directly to a pharmacy without interception or intervention from a third party from a practitioner authorized to prescribe or from one pharmacy to another pharmacy.

"Facsimile (FAX) prescription" means a written prescription or order that is transmitted by an electronic device over telephone lines that sends the exact image to the receiving pharmacy in hard copy form.

"FDA" means the U.S. Food and Drug Administration.

"Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than 12 percent by weight.

"Immediate precursor" means a substance which the Board of Pharmacy has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Interchangeable" means a biosimilar that meets safety standards for determining interchangeability pursuant to 42 U.S.C. § 262(k)(4).

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed, or graphic matter on an article or any of its containers or wrappers, or accompanying such article.

"Manufacture" means the production, preparation, propagation, conversion, or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include compounding.

"Manufacturer" means every person who manufactures, a manufacturer's co-licensed partner, or a repackager.

"Marijuana" means any part of a plant of the genus Cannabis whether growing or not, its seeds, or its resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, nor shall marijuana include the mature stalks of such plant, fiber produced from such stalk, or oil or cake made from the seeds of such plant, unless such stalks, fiber, oil, or cake is combined with other parts of plants of the genus Cannabis. Marijuana shall not include industrial hemp as

defined in § 3.2-4112 that is possessed, cultivated, or manufactured by a grower licensed pursuant to § 3.2-4115.

"Medical equipment supplier" means any person, as defined in § 1-230, engaged in the delivery to the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with no medicinal properties that are used for the operation and cleaning of medical equipment, solutions for peritoneal dialysis, and sterile water or saline for irrigation.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

"New drug" means (i) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use, or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Nuclear medicine technologist" means an individual who holds a current certification with the American Registry of Radiological Technologists or the Nuclear Medicine Technology Certification Board.

"Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

"Official written order" means an order written on a form provided for that purpose by the U.S. Drug Enforcement Administration, under any laws of the United States making provision therefor,

if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the Board of Pharmacy.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Article 4 (§ 54.1-3437 et seq.), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof.

"Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

"Outsourcing facility" means a facility that is engaged in the compounding of sterile drugs and is currently registered as an outsourcing facility with the U.S. Secretary of Health and Human Services and that complies with all applicable requirements of federal and state law, including the Federal Food, Drug, and Cosmetic Act.

"Person" means both the plural and singular, as the case demands, and includes an individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

"Pharmacist-in-charge" means the person who, being licensed as a pharmacist, signs the application for a pharmacy permit and assumes full legal responsibility for the operation of the relevant pharmacy in a manner complying with the laws and regulations for the practice of pharmacy and the sale and dispensing of controlled substances; the "pharmacist-in-charge" shall personally supervise the pharmacy and the pharmacy's personnel as required by § 54.1-3432.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § 54.1-2957.01, licensed physician assistant pursuant to § 54.1-2952.1, pharmacist pursuant to § 54.1-3300, TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in the Commonwealth.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription.

"Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph, or other means of communication to a pharmacist by a duly licensed physician, dentist, veterinarian, or other practitioner authorized by law to prescribe and administer such drugs or medical supplies.

"Prescription drug" means any drug required by federal law or regulation to be dispensed only pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353(b)).

"Production" or "produce" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance or marijuana.

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted, or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name, or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law. However, this definition shall not include a drug that is only advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic, a drug that may be dispensed only upon prescription or the label of which bears substantially the statement "Warning -- may be habit-forming, " or a drug intended for injection.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Reference biological product" means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which a biological product is evaluated in an application submitted to the U.S. Food and Drug Administration for licensure of biological products as biosimilar or interchangeable pursuant to 42 U.S.C. § 262(k).

"Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as an individual, proprietor, agent, servant, or employee.

"Therapeutically equivalent drug products" means drug products that contain the same active ingredients and are identical in strength or concentration, dosage form, and route of administration and that are classified as being therapeutically equivalent by the U.S. Food and Drug Administration pursuant to the definition of "therapeutically equivalent drug products" set forth in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations, otherwise known as the "Orange Book."

"Third-party logistics provider" means a person that provides or coordinates warehousing of or other logistics services for a drug or device in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of the drug or device but does not take ownership of the product or have responsibility for directing the sale or disposition of the product.

"USP-NF" means the current edition of the United States Pharmacopeia-National Formulary.

"Warehouser" means any person, other than a wholesale distributor, manufacturer, or third-party logistics provider, engaged in the business of selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user or consumer. No person shall be subject to any state or local tax by reason of this definition.

"Wholesale distribution" means distribution of prescription drugs to persons other than consumers or patients, subject to the exemptions set forth in the federal Drug Supply Chain Security Act.

"Wholesale distributor" means any person other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager that engages in wholesale distribution.

The words "drugs" and "devices" as used in Chapter 33 (§ 54.1-3300 et seq.) and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus, or glasses or lenses for the eyes.

The terms "pharmacist, " "pharmacy, " and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 (§ 54.1-3300 et seq.) unless the context requires a different meaning.

Code 1950, §§ 54-399, 54-487; 1952, c. 451; 1958, c. 551, § 54-524.2; 1966, c. 193; 1968, c. 582; 1970, c. 650; 1971, Ex. Sess., c. 94; 1972, c. 798; 1975, c. 425; 1976, c. 14; 1977, c. 193; 1978, c. 833; 1979, c. 435; 1980, c. 150; 1988, c. 765; 1991, cc. 519, 524; 1992, cc. 737, 793; 1996, cc. 37, 152, 158, 407, 408; 1997, cc. 20, 677, 806; 1998, c. 470; 1999, cc. 661, 750; 2000, cc. 861, 878, 935; 2003, cc. 509, 639, 995; 2005, cc. 475, 839; 2006, c. 346; 2012, c. 213; 2013, cc. 412, 504, 544, 765; 2014, cc. 674, 719; 2015, cc. 158, 180, 300; 2016, cc. 221, 495.

§ 54.1-3401.1. Repealed

Repealed by Acts 2016, c. 221, cl. 2.

§ 54.1-3402. Repealed

Repealed by Acts 2003, c. 509.

§ 54.1-3403. Chapter not applicable to economic poisons

This chapter shall not be construed to apply (i) to poisons used for the control of insects, animal pests, weeds, fungus diseases or other substances sold for use in agricultural, horticultural or related arts and sciences when such substances which are poisons within the meaning of this chapter are sold in original unbroken packages bearing a label having plainly printed upon it the name of the contents and the word POISON and an effective antidote or (ii) to any person, persons, corporations or associations engaged in the business of selling, making, compounding or manufacturing industrial chemicals for distribution or sale at wholesale or for making, compounding or manufacturing other products.

Code 1950, § 54-403.1; 1958, c. 551; 1970, c. 650, § 54-524.4; 1988, c. 765.

§ 54.1-3404. Inventories of controlled substances required of certain persons; contents and form of record

A. Except as set forth in subsection G, every person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, IV or V shall take a complete and accurate inventory of all stocks of Schedules I through V drugs on the date he first engages in business. If there are no controlled substances on hand at that time, he shall record this fact as part of the inventory. An inventory taken by use of an oral recording device shall be promptly reduced to writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date.

B. After the initial inventory is taken, every person described herein shall take a new inventory at least every two years of all stocks on hand of Schedules I through V drugs. The biennial inventory shall be taken on any date which is within two years of the previous biennial inventory.

C. The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received, the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.

D. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Any person selling, administering, dispensing or otherwise disposing of such drugs shall make and sign such record at the time of each transaction. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of any drugs lost, destroyed or stolen, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. The form of records shall be prescribed by the Board.

E. Whenever any registrant or licensee discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to the Board. If the registrant or licensee is unable to determine the exact kind and quantity of the drug loss, he shall immediately make a complete inventory of all Schedule I through V drugs.

Within 30 days after the discovery of a loss of drugs, the registrant or licensee shall furnish the Board with a listing of the kind, quantity and strength of such drugs lost.

F. All records required pursuant to this section shall be maintained completely and accurately for two years from the date of the transaction recorded.

G. Each person authorized to conduct chemical analyses using controlled substances in the Department of Forensic Science shall comply with the inventory requirements set forth in subsections A through F; however, the following substances shall not be required to be included in such inventory: (i) controlled substances on hand at the time of the inventory in a quantity of less than one kilogram, other than a hallucinogenic controlled substance listed in Schedule I of this chapter; or (ii) hallucinogenic controlled substances, other than lysergic acid diethylamide, on hand at the time of the inventory in a quantity of less than 20 grams; or (iii) lysergic acid diethylamide on hand at the time of the inventory in a quantity of less than 0.5 grams. Further, no inventory shall be required of known or suspected controlled substances that have been received as evidentiary materials for analyses by the Department of Forensic Science.

1970, c. 650, § 54-524.56; 1972, c. 798; 1978, c. 833; 1979, c. 435; 1980, c. 203; 1982, c. 278; 1988, c. 765; 1998, c. 105; 2004, c. 51; 2005, cc. 868, 881.

§ 54.1-3405. Access to and copies of records; inspections

Every person required to prepare or obtain, and keep, records, and any carrier maintaining records with respect to any shipment containing any drug, and every person in charge or having custody of such records shall, upon request of an agent designated by the Board, permit such agent at reasonable times to have access to and copy such records.

Any agent designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall, for the purpose of such investigations, also be permitted access at reasonable times to all such records relevant to a specific investigation and be allowed to inspect and copy such records. However, agents designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall not copy and remove patient records unless such patient records are relevant to a specific investigation. Any agent designated by the Superintendent of the Department of State Police shall allow the person or carrier maintaining such records, or agent thereof, to examine any copies of records before their removal from the premises. If the agent designated by the Superintendent of State Police copies records on magnetic storage media, he will deliver a duplicate of the magnetic storage media on which the copies are stored to the person or carrier maintaining such records or an agent thereof, prior to removing the copies from the premises. If the original of any record is removed by any agent designated by the Superintendent of State Police, a receipt therefor shall be left with the person or carrier maintaining such records or an agent thereof, and a copy of the removed record shall be provided the person or carrier maintaining such records within a reasonable time thereafter.

For the purposes of verification of such records and of enforcement of this chapter, agents designated by the Board or by the Superintendent are authorized, upon presenting appropriate credentials to the owner, operator, or agent in charge, to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of; and to inspect, within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent

equipment, finished and unfinished material, containers and labeling, including records, files, papers, processes, controls, and facilities, bearing on violation of this chapter; and to inventory and obtain samples of any stock of any drugs.

If a sample of any drug is obtained, the agent making the inspection shall, upon completion of the inspection and before leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample. No inspection shall extend to financial data, sales data other than shipment data, pricing data, personnel data or research data.

Any information obtained by a designated State Police agent during an inspection under this section which constitutes evidence of a violation of any provision of this chapter shall be reported to the Department of Health Professions upon its discovery.

Any information obtained by an agent designated by the Board during an inspection under this section which constitutes evidence of a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 shall be reported to the Department of State Police upon its discovery.

1970, c. 650, § 54-524.57; 1988, cc. 266, 765; 1992, cc. 743, 808 .

§ 54.1-3406. Records confidential; disclosure of information about violations of federal law

A. No agent of the Board or agent designated by the Superintendent of the Department of State Police having knowledge by virtue of his office of any prescriptions, papers, records, or stocks of drugs shall divulge such knowledge, except in connection with a criminal investigation authorized by the Attorney General or attorney for the Commonwealth or with a prosecution or proceeding in court or before a regulatory board or officer, to which investigation, prosecution or proceeding the person to whom such prescriptions, papers or records relate is a subject or party. This section shall not be construed to prohibit the Board president or his designee and the Director of the Department of Health Professions from discharging their duties as provided in this title.

B. Notwithstanding the provisions of § 54.1-2400.2, the Board shall have the authority to submit to the U.S. Secretary of Health and Human Services information resulting from an inspection or an investigation indicating that a compounding pharmacy or outsourcing facility may be in violation of federal law or regulations with the exception of compounding for office-based administration in accordance with § 54.1-3410.2.

Code 1950, § 54-512; 1970, c. 650; 1983, c. 528, § 54-524.58; 1988, cc. 266, 765; 2015, c. 300.

§ 54.1-3407. Analysis of controlled substances

A licensed physician or pharmacist may receive controlled substances from or on behalf of a patient for qualitative or quantitative analysis purposes only, without an official order form, if within twenty-four hours of its receipt the physician or pharmacist mails or delivers the entire sample to a laboratory operated by the Commonwealth and designated by the Board to receive such substances. If the sample is mailed, it shall be sent by registered or certified mail, postage prepaid, with return receipt requested. If personally delivered, a receipt shall be obtained from

such laboratory. All receipts or returns shall be kept on file for three years and shall be available for inspection by the Board at any reasonable time.

1972, c. 798, § 54-524.59:1; 1988, c. 765.

§ 54.1-3408. Professional use by practitioners

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause drugs or devices to be administered by:

1. A nurse, physician assistant, or intern under his direction and supervision;

2. Persons trained to administer drugs and devices to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the Department of Behavioral Health and Developmental Services who administer drugs under the control and supervision of the prescriber or a pharmacist;

3. Emergency medical services personnel certified and authorized to administer drugs and devices pursuant to regulations of the Board of Health who act within the scope of such certification and pursuant to an oral or written order or standing protocol; or

4. A licensed respiratory therapist as defined in § 54.1-2954 who administers by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine and oxygen for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to the regulations of the Board of Health, certain emergency medical services technicians may possess and administer epinephrine in emergency cases of anaphylactic shock.

Pursuant to an order or standing protocol issued by the prescriber within the course of his professional practice, any school nurse, school board employee, employee of a local governing body,

or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an order or a standing protocol issued by the prescriber within the course of his professional practice, any employee of a school for students with disabilities, as defined in § 22.1-319 and licensed by the Board of Education, or any employee of a private school that is accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education who is authorized by a prescriber and trained in the administration of epinephrine may possess and administer epinephrine.

Pursuant to an order issued by the prescriber within the course of his professional practice, an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services may possess and administer epinephrine, provided such person is authorized and trained in the administration of epinephrine.

Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize pharmacists to possess epinephrine and oxygen for administration in treatment of emergency medical conditions.

E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs; oxygen for use in emergency situations; and epinephrine for use in emergency cases of anaphylactic shock.

G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or licensed practical nurses under the immediate and direct supervision of a registered nurse to possess and administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those

in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of (i) a school board, (ii) a school for students with disabilities as defined in § 22.1-319 licensed by the Board of Education, or (iii) a private school accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Pursuant to a written order issued by the prescriber within the course of his professional practice, such prescriber may authorize an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services to assist with the administration of insulin or to administer glucagon to a person diagnosed as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia, provided such employee or person providing services has been trained in the administration of insulin and glucagon.

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, by (i) licensed pharmacists, (ii) registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist, nurse, or designated emergency medical services provider who holds an advanced life support certificate issued by the Commissioner of Health under the direction of an operational medical director when the prescriber is not physically present. The emergency medical services provider shall provide documentation of the vaccines to be recorded in the Virginia Immunization Information System.

J. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § 54.1-2722, to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, as well as any other Schedule VI topical drug approved by the Board of Dentistry.

In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia.

K. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered professional nurses certified as sexual assault nurse examiners-A (SANE-A) under his supervision and when he is not physically present to possess and administer preventive medications for victims of sexual assault as recommended by the Centers for Disease Control and Prevention.

L. This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a prescriber's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) an individual receiving services in a program licensed by the Department of Behavioral Health and Developmental Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center licensed by the Department of Social Services; (v) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services; (vi) a resident of a private children's residential facility, as defined in § 63.2-100 and licensed by the Department of Social Services, Department of Education, or Department of Behavioral Health and Developmental Services; or (vii) a student in a school for students with disabilities, as defined in § 22.1-319 and licensed by the Board of Education.

In addition, this section shall not prevent a person who has successfully completed a training program for the administration of drugs via percutaneous gastrostomy tube approved by the Board of Nursing and been evaluated by a registered nurse as having demonstrated competency in administration of drugs via percutaneous gastrostomy tube from administering drugs to a person receiving services from a program licensed by the Department of Behavioral Health and Developmental Services to such person via percutaneous gastrostomy tube. The continued competency of a person to administer drugs via percutaneous gastrostomy tube shall be evaluated semiannually by a registered nurse.

M. Medication aides registered by the Board of Nursing pursuant to Article 7 (§ 54.1-3041 et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.

N. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

O. In addition, this section shall not prevent the administration of drugs by a person to (i) a child in a child day program as defined in § 63.2-100 and regulated by the State Board of Social Services or a local government pursuant to § 15.2-914, or (ii) a student of a private school that is accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education, provided such person (a) has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; (b) has obtained written authorization from a parent or guardian; (c) administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; and (d) administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container that would normally be self-administered by the child or student, or administered by a parent or guardian to the child or student.

P. In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control, and supervision of the State Health Commissioner.

Q. Nothing in this title shall prohibit the administration of normally self-administered drugs by unlicensed individuals to a person in his private residence.

R. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

S. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions or persons authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.), in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner, or physician assistant and under the immediate and direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as a "trainee" while working in a renal dialysis facility.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.).

T. Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.

U. Pursuant to a specific order for a patient and under his direct and immediate supervision, a prescriber may authorize the administration of controlled substances by personnel who have been properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for such administration.

V. A physician assistant, nurse or a dental hygienist may possess and administer topical fluoride varnish to the teeth of children aged six months to three years pursuant to an oral or written order or a standing protocol issued by a doctor of medicine, osteopathic medicine, or dentistry that conforms to standards adopted by the Department of Health.

W. A prescriber, acting in accordance with guidelines developed pursuant to § 32.1-46.02, may authorize the administration of influenza vaccine to minors by a licensed pharmacist, registered nurse, licensed practical nurse under the direction and immediate supervision of a registered

nurse, or emergency medical services provider who holds an advanced life support certificate issued by the Commissioner of Health when the prescriber is not physically present.

X. Notwithstanding the provisions of § 54.1-3303, pursuant to an oral, written, or standing order issued by a prescriber, and in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health, a pharmacist may dispense naloxone or other opioid antagonist used for overdose reversal and a person may possess and administer naloxone or other opioid antagonist used for overdose reversal to a person who is believed to be experiencing or about to experience a life-threatening opiate overdose. Law-enforcement officers as defined in § 9.1-101 and firefighters who have completed a training program may also possess and administer naloxone in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health.

Code 1950, § 54-497; 1956, c. 225; 1970, c. 650, § 54-524.65; 1973, c. 468; 1976, cc. 358, 614; 1977, c. 302; 1978, c. 224; 1980, cc. 270, 287; 1983, cc. 456, 528; 1984, cc. 141, 555; 1986, c. 81; 1987, c. 226; 1988, c. 765; 1990, c. 309; 1991, cc. 141, 519, 524, 532; 1992, cc. 610, 760, 793; 1993, cc. 15, 810, 957, 993; 1994, c. 53; 1995, cc. 88, 529; 1996, cc. 152, 158, 183, 406, 408, 490; 1997, cc. 272, 566, 806, 906; 1998, c. 112; 1999, c. 570; 2000, cc. 135, 498, 861, 881, 935; 2003, cc. 465, 497, 515, 794, 995, 1020; 2005, cc. 113, 610, 924; 2006, cc. 75, 432, 686, 858; 2007, cc. 17, 699, 702, 783; 2008, cc. 85, 694; 2009, cc. 48, 110, 506, 813, 840; 2010, cc. 179, 245, 252; 2011, c. 292; 2012, cc. 787, 803, 833, 835; 2013, cc. 114, 132, 183, 191, 252, 267, 328, 336, 359, 617; 2014, cc. 88, 491; 2015, cc. 302, 387, 502, 503, 514, 725, 732, 752; 2016, c. 144.

§ 54.1-3408.01. Requirements for prescriptions

A. The written prescription referred to in § 54.1-3408 shall be written with ink or individually typed or printed. The prescription shall contain the name, address, and telephone number of the prescriber. A prescription for a controlled substance other than one controlled in Schedule VI shall also contain the federal controlled substances registration number assigned to the prescriber. The prescriber's information shall be either preprinted upon the prescription blank, electronically printed, typewritten, rubber stamped, or printed by hand.

The written prescription shall contain the first and last name of the patient for whom the drug is prescribed. The address of the patient shall either be placed upon the written prescription by the prescriber or his agent, or by the dispenser of the prescription. If not otherwise prohibited by law, the dispenser may record the address of the patient in an electronic prescription dispensing record for that patient in lieu of recording it on the prescription. Each written prescription shall be dated as of, and signed by the prescriber on, the day when issued. The prescription may be prepared by an agent for the prescriber's signature.

This section shall not prohibit a prescriber from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures, and other information specified above are otherwise fulfilled.

No written prescription order form shall include more than one prescription. However, this provision shall not apply (i) to prescriptions written as chart orders for patients in hospitals and long-term-care facilities, patients receiving home infusion services or hospice patients, or (ii) to a prescription ordered through a pharmacy operated by or for the Department of Corrections or the Department of Juvenile Justice, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated by the Department of Behavioral Health and Developmental Services; or (iii) to prescriptions written for patients residing in adult and juvenile detention centers, local or regional jails, or work release centers operated by the Department of Corrections.

B. Prescribers' orders, whether written as chart orders or prescriptions, for Schedules II, III, IV, and V controlled drugs to be administered to (i) patients or residents of long-term care facilities served by a Virginia pharmacy from a remote location or (ii) patients receiving parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion therapy and served by a home infusion pharmacy from a remote location, may be transmitted to that remote pharmacy by an electronic communications device over telephone lines which send the exact image to the receiver in hard copy form, and such facsimile copy shall be treated as a valid original prescription order. If the order is for a radiopharmaceutical, a physician authorized by state or federal law to possess and administer medical radioactive materials may authorize a nuclear medicine technologist to transmit a prescriber's verbal or written orders for radiopharmaceuticals.

C. The oral prescription referred to in § 54.1-3408 shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.

2000, cc. 135, 861; 2002, c. 411; 2003, c. 639; 2006, c. 195; 2009, cc. 813, 840.

§ 54.1-3408.02. Transmission of prescriptions

Consistent with federal law and in accordance with regulations promulgated by the Board, prescriptions may be transmitted to a pharmacy by electronic transmission or by facsimile machine and shall be treated as valid original prescriptions.

2000, c. 878.

§ 54.1-3408.03. Dispensing of therapeutically equivalent drug product permitted

A. A pharmacist may dispense a therapeutically equivalent drug product for a prescription that is written for a brand-name drug product unless (i) the prescriber indicates such substitution is not authorized by specifying on the prescription, "brand medically necessary" or (ii) the patient insists on the dispensing of the brand-name drug product.

In the case of an oral prescription, the prescriber's oral dispensing instructions regarding substitution shall be followed.

B. Prescribers using prescription blanks printed in compliance with Virginia law in effect on June 30, 2003, having two check boxes and referencing the Virginia Voluntary Formulary, may indicate, until July 1, 2006, that substitution is not authorized by checking the "Dispense as Written" box. If the "Voluntary Formulary Permitted" box is checked on such prescription blanks or if neither box is checked, a pharmacist may dispense a therapeutically equivalent drug product pursuant to such prescriptions.

C. If the pharmacist dispenses a drug product other than the brand name prescribed, he shall so inform the purchaser and shall indicate, unless otherwise directed by the prescriber, on both his permanent record and the prescription label, the brand name or, in the case of a therapeutically equivalent drug product, the name of the manufacturer or the distributor. Whenever a pharmacist dispenses a therapeutically equivalent drug product pursuant to a prescription written for a brand-name product, the pharmacist shall label the drug with the name of the therapeutically equivalent drug product followed by the words "generic for" and the brand name of the drug for which the prescription was written.

D. When a pharmacist dispenses a drug product other than the drug product prescribed, the dispensed drug product shall be at a lower retail price than that of the drug product prescribed. Such retail price shall not exceed the usual and customary retail price charged by the pharmacist for the dispensed therapeutically equivalent drug product.

2003, c. 639.

§ 54.1-3408.04. Dispensing of interchangeable biosimilars permitted

A. A pharmacist may dispense a biosimilar that has been licensed by the U.S. Food and Drug Administration as interchangeable with the prescribed product unless (i) the prescriber indicates such substitute is not authorized by specifying on the prescription "brand medically necessary" or (ii) the patient insists on the dispensing of the prescribed biological product. In the case of an oral prescription, the prescriber's oral dispensing instructions regarding dispensing of an interchangeable biosimilar shall be followed. No pharmacist shall dispense a biosimilar in place of a prescribed biological product unless the biosimilar has been licensed as interchangeable with the prescribed biological product by the U.S. Food and Drug Administration.

B. When a pharmacist dispenses an interchangeable biosimilar in the place of a prescribed biological product, the pharmacist or his designee shall inform the patient prior to dispensing the interchangeable biosimilar. The pharmacist or his designee shall also indicate, unless otherwise directed by the prescriber, on both the record of dispensing and the prescription label, the brand name or, in the case of an interchangeable biosimilar, the product name and the name of the manufacturer or distributor of the interchangeable biosimilar. Whenever a pharmacist substitutes an interchangeable biosimilar pursuant to a prescription written for a brand-name product, the pharmacist or his designee shall label the drug with the name of the interchangeable biosimilar followed by the words "Substituted for" and the name of the biological product for which the

prescription was written. Records of substitutions of interchangeable biosimilars shall be maintained by the pharmacist and the prescriber for a period of not less than two years from the date of dispensing.

C. [Expired]

D. [Expired]

2013, cc. 412, 544.

§ 54.1-3408.1. Prescription in excess of recommended dosage in certain cases

In the case of a patient with intractable pain, a physician may prescribe a dosage in excess of the recommended dosage of a pain relieving agent if he certifies the medical necessity for such excess dosage in the patient's medical record. Any person who prescribes, dispenses or administers an excess dosage in accordance with this section shall not be in violation of the provisions of this title because of such excess dosage, if such excess dosage is prescribed, dispensed or administered in good faith for accepted medicinal or therapeutic purposes.

Nothing in this section shall be construed to grant any person immunity from investigation or disciplinary action based on the prescription, dispensing or administration of an excess dosage in violation of this title.

1988, c. 870, § 54-524.65:1; 1990, c. 681; 1995, c. 277.

§ 54.1-3408.2. Failure to report administration or dispensing of or prescription for controlled substances; report required; penalty

Any person authorized to prescribe, dispense, or administer controlled substances pursuant to § 54.1-3408 who has reason to suspect that a person has obtained or attempted to obtain a controlled substance or prescription for a controlled substance by fraud or deceit, may report the activity to the local law-enforcement agency for investigation. Any person who, in good faith, makes a report or furnishes information or records to a law-enforcement officer or entity pursuant to this section shall not be liable for civil damages in connection with making such report or furnishing such information or records.

2010, c. 185.

§ 54.1-3408.3. Certification for use of cannabidiol oil or THC-A oil to treat intractable epilepsy

A. As used in this section:

"Cannabidiol oil" means a processed Cannabis plant extract that contains at least 15 percent cannabidiol but no more than five percent tetrahydrocannabinol, or a dilution of the resin of the Cannabis plant that contains at least 50 milligrams of cannabidiol per milliliter but not more than five percent tetrahydrocannabinol.

"THC-A oil" means a processed Cannabis plant extract that contains at least 15 percent tetrahydrocannabinol acid but not more than five percent tetrahydrocannabinol, or a dilution of the

resin of the Cannabis plant that contains at least 50 milligrams of tetrahydrocannabinol acid per milliliter but not more than five percent tetrahydrocannabinol.

B. A practitioner of medicine or osteopathy licensed by the Board of Medicine in the course of his professional practice may issue a written certification for the use of cannabidiol oil or THC-A oil for treatment or to alleviate the symptoms of a patient's intractable epilepsy.

C. The written certification shall be on a form provided by the Office of the Executive Secretary of the Supreme Court developed in consultation with the Board of Medicine. Such written certification shall contain the name, address, and telephone number of the practitioner, the name and address of the patient issued the written certification, the date on which the written certification was made, and the signature of the practitioner. Such written certification issued pursuant to subsection B shall expire no later than one year after its issuance unless the practitioner provides in such written certification an earlier expiration.

D. No practitioner shall be prosecuted under § 18.2-248 or 18.2-248.1 for dispensing or distributing cannabidiol oil or THC-A oil for the treatment or to alleviate the symptoms of a patient's intractable epilepsy pursuant to a written certification issued pursuant to subsection B. Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

2015, cc. 7, 8.

§ 54.1-3409. Professional use by veterinarians

A veterinarian may not prescribe controlled substances for human use and shall only prescribe, dispense or administer a controlled substance in good faith for use by animals within the course of his professional practice. He may prescribe, on a written prescription or on oral prescription as authorized by § 54.1-3410. He may administer drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued, and shall bear the full name and address of the owner of the animal, and the species of the animal for which the drug is prescribed and the full name, address and registry number, under the federal laws of the person prescribing, if he is required by those laws to be so registered.

Code 1950, § 54-498; 1956, c. 225; 1970, c. 650, § 54-524.66; 1983, c. 528; 1988, c. 765.

§ 54.1-3410. When pharmacist may sell and dispense drugs

A. A pharmacist, acting in good faith, may sell and dispense drugs and devices to any person pursuant to a prescription of a prescriber as follows:

1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of

the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed;

2. In emergency situations, Schedule II drugs may be dispensed pursuant to an oral prescription in accordance with the Board's regulations;

3. Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a prescriber, he shall affix to the container in which such drug is dispensed, a label showing the prescription serial number or name of the drug; the date of initial filling; his name and address, or the name and address of the pharmacy; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the prescriber by whom the prescription was written, except for those drugs dispensed to a patient in a hospital pursuant to a chart order; and such directions as may be stated on the prescription.

B. A drug controlled by Schedules III through VI or a device controlled by Schedule VI shall be dispensed upon receipt of a written or oral prescription as follows:

1. If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed.

2. If the prescription is oral, the prescriber shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and devices, except for the signature of the prescriber.

A pharmacist who dispenses a Schedule III through VI drug or device shall label the drug or device as required in subdivision A 3 of this section.

C. A drug controlled by Schedule VI may be refilled without authorization from the prescriber if, after reasonable effort has been made to contact him, the pharmacist ascertains that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The refill shall be made in compliance with the provisions of § 54.1-3411.

If the written or oral prescription is for a Schedule VI drug or device and does not contain the address or registry number of the prescriber, or the address of the patient, the pharmacist need not reduce such information to writing if such information is readily retrievable within the pharmacy.

D. Pursuant to authorization of the prescriber, an agent of the prescriber on his behalf may orally transmit a prescription for a drug classified in Schedules III through VI if, in such cases, the written record of the prescription required by this subsection specifies the full name of the agent of the prescriber transmitting the prescription.

1970, c. 650, § 54-524.67; 1972, c. 798; 1976, c. 614; 1977, c. 302; 1983, cc. 395, 612; 1988, c. 765; 1996, c. 408; 2003, c. 511.

§ 54.1-3410.1. Requirements for radiopharmaceuticals

A. A pharmacist who is authorized by the Board and acting in good faith, may sell and dispense radiopharmaceuticals pursuant to the order of a physician who is authorized by state or federal law to possess and administer radiopharmaceuticals for the treatment or diagnosis of disease.

B. When an authorized nuclear pharmacist dispenses a radioactive medical material, he shall assure that the outer container (shield) of the radiopharmaceutical shall bear the following information:

1. The name and address of the nuclear pharmacy;

2. The name of the prescriber (authorized user);

3. The date of dispensing;

4. The serial number assigned to the radiopharmaceutical order;

5. The standard radiation symbol;

6. The name of the diagnostic procedure;

7. The words "Caution: Radioactive Material";

8. The name of the radionuclide;

9. The amount of radioactivity and the calibration date and time;

10. The expiration date and time;

11. In the case of a diagnostic radiopharmaceutical, the patient's name or the words "Per Physician's Order"; and

12. In the case of a therapeutic radiopharmaceutical, the patient's name.

C. Orders for radiopharmaceuticals, whether written or verbal, shall include at least the following information:

1. The name of the institution or facility and the name of the person transmitting the order;

2. The date that the radiopharmaceutical will be needed and the calibration time;

3. The name or generally recognized and accepted abbreviation of the radiopharmaceutical;

4. The dose or activity of the radiopharmaceutical at the time of calibration; and

5. In the case of a therapeutic radiopharmaceutical or a radiopharmaceutical blood product, the name of the patient shall be obtained prior to dispensing.

2000, c. 861.

§ 54.1-3410.2. Compounding; pharmacists' authority to compound under certain conditions; labeling and record maintenance requirements

A. A pharmacist may engage in compounding of drug products when the dispensing of such compounded products is (i) pursuant to valid prescriptions for specific patients and (ii) consistent with the provisions of § 54.1-3303 relating to the issuance of prescriptions and the dispensing of drugs.

Pharmacists shall label all compounded drug products that are dispensed pursuant to a prescription in accordance with this chapter and the Board's regulations, and shall include on the labeling an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding.

B. A pharmacist may also engage in compounding of drug products in anticipation of receipt of prescriptions based on a routine, regularly observed prescribing pattern.

Pharmacists shall label all products compounded prior to dispensing with (i) the name and strength of the compounded medication or a list of the active ingredients and strengths; (ii) the pharmacy's assigned control number that corresponds with the compounding record; (iii) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; and (iv) the quantity.

C. In accordance with the conditions set forth in subsections A and B, pharmacists shall not distribute compounded drug products for subsequent distribution or sale to other persons or to commercial entities, including distribution to pharmacies or other entities under common ownership or control with the facility in which such compounding takes place; however, a pharmacist may distribute to a veterinarian in accordance with federal law.

Compounded products for companion animals, as defined in regulations promulgated by the Board of Veterinary Medicine, and distributed by a pharmacy to a veterinarian for further distribution or sale to his own patients shall be limited to drugs necessary to treat an emergent condition when timely access to a compounding pharmacy is not available as determined by the prescribing veterinarian.

A pharmacist may, however, deliver compounded products dispensed pursuant to valid prescriptions to alternate delivery locations pursuant to § 54.1-3420.2.

A pharmacist may provide a reasonable amount of compounded products to practitioners of medicine, osteopathy, podiatry, or dentistry to administer to their patients, either personally or under their direct and immediate supervision, if there is a critical need to treat an emergency condition, or as allowed by federal law or regulations. A pharmacist may also provide compounded products to practitioners of veterinary medicine for office-based administration to their patients.

Pharmacists who provide compounded products for office-based administration for treatment of an emergency condition or as allowed by federal law or regulations shall label all compounded products distributed to practitioners other than veterinarians for administration to their patients

with (i) the statement "For Administering in Prescriber Practice Location Only"; (ii) the name and strength of the compounded medication or list of the active ingredients and strengths; (iii) the facility's control number; (iv) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; (v) the name and address of the pharmacy; and (vi) the quantity.

Pharmacists shall label all compounded products for companion animals, as defined in regulations promulgated by the Board of Veterinary Medicine, and distributed to a veterinarian for either further distribution or sale to his own patient or administration to his own patient with (a) the name and strength of the compounded medication or list of the active ingredients and strengths; (b) the facility's control number; (c) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; (d) the name and address of the pharmacy; and (e) the quantity.

D. Pharmacists shall personally perform or personally supervise the compounding process, which shall include a final check for accuracy and conformity to the formula of the product being prepared, correct ingredients and calculations, accurate and precise measurements, appropriate conditions and procedures, and appearance of the final product.

E. Pharmacists shall ensure compliance with USP-NF standards for both sterile and non-sterile compounding.

F. Pharmacists may use bulk drug substances in compounding when such bulk drug substances:

1. Comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if such monograph exists, and the United States Pharmacopoeia chapter on pharmacy compounding; or are drug substances that are components of drugs approved by the FDA for use in the United States; or are otherwise approved by the FDA; or are manufactured by an establishment that is registered by the FDA; and

2. Are distributed by a licensed wholesale distributor or registered nonresident wholesale distributor, or are distributed by a supplier otherwise approved by the Board and the FDA to distribute bulk drug substances if the pharmacist can establish purity and safety by reasonable means, such as lot analysis, manufacturer reputation, or reliability of the source.

G. Pharmacists may compound using ingredients that are not considered drug products in accordance with the USP-NF standards and guidance on pharmacy compounding.

H. Pharmacists shall not engage in the following:

1. The compounding for human use of a drug product that has been withdrawn or removed from the market by the FDA because such drug product or a component of such drug product has been found to be unsafe. However, this prohibition shall be limited to the scope of the FDA withdrawal;

2. The regular compounding or the compounding of inordinate amounts of any drug products that are essentially copies of commercially available drug products. However, this prohibition shall not

include (i) the compounding of any commercially available product when there is a change in the product ordered by the prescriber for an individual patient, (ii) the compounding of a commercially manufactured drug only during times when the product is not available from the manufacturer or supplier, (iii) the compounding of a commercially manufactured drug whose manufacturer has notified the FDA that the drug is unavailable due to a current drug shortage, (iv) the compounding of a commercially manufactured drug when the prescriber has indicated in the oral or written prescription for an individual patient that there is an emergent need for a drug that is not readily available within the time medically necessary, or (v) the mixing of two or more commercially available products regardless of whether the end product is a commercially available product; or

3. The compounding of inordinate amounts of any preparation in cases in which there is no observed historical pattern of prescriptions and dispensing to support an expectation of receiving a valid prescription for the preparation. The compounding of an inordinate amount of a preparation in such cases shall constitute manufacturing of drugs.

I. Pharmacists shall maintain records of all compounded drug products as part of the prescription, formula record, formula book, or other log or record. Records may be maintained electronically, manually, in a combination of both, or by any other readily retrievable method.

1. In addition to other requirements for prescription records, records for products compounded pursuant to a prescription order for a single patient where only manufacturers' finished products are used as components shall include the name and quantity of all components, the date of compounding and dispensing, the prescription number or other identifier of the prescription order, the total quantity of finished product, the signature or initials of the pharmacist or pharmacy technician performing the compounding, and the signature or initials of the pharmacist responsible for supervising the pharmacy technician and verifying the accuracy and integrity of compounded products.

2. In addition to the requirements of subdivision I 1, records for products compounded in bulk or batch in advance of dispensing or when bulk drug substances are used shall include: the generic name and the name of the manufacturer of each component or the brand name of each component; the manufacturer's lot number and expiration date for each component or when the original manufacturer's lot number and expiration date are unknown, the source of acquisition of the component; the assigned lot number if subdivided, the unit or package size and the number of units or packages prepared; and the beyond-use date. The criteria for establishing the beyond-use date shall be available for inspection by the Board.

3. A complete compounding formula listing all procedures, necessary equipment, necessary environmental considerations, and other factors in detail shall be maintained where such instructions are necessary to replicate a compounded product or where the compounding is difficult or complex and must be done by a certain process in order to ensure the integrity of the finished product.

4. A formal written quality assurance plan shall be maintained that describes specific monitoring and evaluation of compounding activities in accordance with USP-NF standards. Records shall be maintained showing compliance with monitoring and evaluation requirements of the plan to include training and initial and periodic competence assessment of personnel involved in compounding, monitoring of environmental controls and equipment calibration, and any end-product testing, if applicable.

J. Practitioners who may lawfully compound drugs for administering or dispensing to their own patients pursuant to §§ 54.1-3301, 54.1-3304, and 54.1-3304.1 shall comply with all provisions of this section and the relevant Board regulations.

K. Every pharmacist-in-charge or owner of a permitted pharmacy or a registered nonresident pharmacy engaging in sterile compounding shall notify the Board of its intention to dispense or otherwise deliver a sterile compounded drug product into the Commonwealth. Upon renewal of its permit or registration, a pharmacy or nonresident pharmacy shall notify the Board of its intention to continue dispensing or otherwise delivering sterile compounded drug products into the Commonwealth. Failure to provide notification to the Board shall constitute a violation of Chapter 33 (§ 54.1-3300 et seq.) or Chapter 34 (§ 54.1-3400 et seq.). The Board shall maintain this information in a manner that will allow the production of a list identifying all such sterile compounding pharmacies.

2003, c. 509; 2005, c. 200; 2012, c. 173; 2013, c. 765; 2014, c. 147; 2015, c. 300; 2016, c. 221.

§ 54.1-3411. When prescriptions may be refilled

Prescriptions may be refilled as follows:

1. A prescription for a drug in Schedule II may not be refilled.

2. A prescription for a drug in Schedules III or IV may not be filled or refilled more than six months after the date on which such prescription was issued and no such prescription may be authorized to be refilled, nor be refilled, more than five times, except that any prescription for such a drug after six months from the date of issue, or after being refilled five times, may be renewed by the prescriber issuing it either in writing, or orally, if promptly reduced to writing and filed by the pharmacist filling it.

3. A prescription in Schedule VI may not be refilled, unless authorized by the prescriber either on the face of the original prescription or orally by the prescriber except as provided in subdivision 4 of this section. Oral instructions shall be reduced promptly to writing by the pharmacist and filed on or with the original prescription.

4. A prescription for a drug controlled by Schedule VI may be refilled without authorization from the prescriber if reasonable effort has been made to communicate with the prescriber, and the pharmacist has determined that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The pharmacist shall inform the patient of the prescriber's

unavailability and that the refill is being made without his authorization. The pharmacist shall promptly inform the prescriber of such refill. The date and quantity of the refill, the prescriber's unavailability and the rationale for the refill shall be noted on the reverse side of the prescription.

1970, c. 650, § 54-524.68; 1972, c. 798; 1976, c. 614; 1983, c. 395; 1988, c. 765; 1996, c. 408.

§ 54.1-3411.1. Prohibition on returns, exchanges, or re-dispensing of drugs; exceptions

A. Drugs dispensed to persons pursuant to a prescription shall not be accepted for return or exchange for the purpose of re-dispensing by any pharmacist or pharmacy after such drugs have been removed from the pharmacy premises from which they were dispensed except:

1. In a hospital with an on-site hospital pharmacy wherein drugs may be returned to the pharmacy in accordance with practice standards;

2. In such cases where official compendium storage requirements are assured and the drugs are in manufacturers' original sealed containers or in sealed individual dose or unit dose packaging that meets official compendium class A or B container requirements, or better, and such return or exchange is consistent with federal law; or

3. When a dispensed drug has not been out of the possession of a delivery agent of the pharmacy.

B. The Board of Pharmacy shall promulgate regulations to establish a Prescription Drug Donation Program for accepting unused previously dispensed prescription drugs that meet the criteria set forth in subdivision A 2, for the purpose of re-dispensing such drugs to indigent patients, either through hospitals, or through clinics organized in whole or in part for the delivery of health care services to the indigent. Such program shall not authorize the donation of Schedule II-V controlled substances if so prohibited by federal law. No drugs shall be re-dispensed unless the integrity of the drug can be assured.

C. Unused prescription drugs dispensed for use by persons eligible for coverage under Title XIX or Title XXI of the Social Security Act, as amended, may be donated pursuant to this section unless such donation is prohibited.

D. A pharmaceutical manufacturer shall not be liable for any claim or injury arising from the storage, donation, acceptance, transfer, or dispensing of any drug provided to a patient, or any other activity undertaken in accordance with a drug distribution program established pursuant to this section.

E. Nothing in this section shall be construed to create any new or additional liability, or to abrogate any liability that may exist, applicable to a pharmaceutical manufacturer for its products separately from the storage, donation, acceptance, transfer, or dispensing of any drug provided to a patient in accordance with a drug distribution program established pursuant to this section.

2002, c. 632; 2005, c. 68; 2008, c. 429; 2009, cc. 109, 114.

§ 54.1-3411.2. Prescription drug disposal programs

A. As used in this section:

"Authorized pharmacy disposal site" means a pharmacy that qualifies as a collection site pursuant to 21 C.F.R § 1317.40.

"Pharmacy drug disposal program" means any voluntary drug disposal program located at or operated in accordance with state and federal law by a pharmacy.

B. A pharmacy may participate in a pharmacy drug disposal program in accordance with state and federal law regarding proper collection, storage, and destruction of prescription drugs, including controlled and noncontrolled substances. A pharmacy that chooses to participate in a pharmacy drug disposal program shall notify the Board, and the Board shall maintain a list of all pharmacies in the Commonwealth that have chosen to participate in a pharmacy drug disposal program on a website maintained by the Board.

C. No person that participates in a pharmacy drug disposal program shall be liable for any theft, robbery, or other criminal act related to its participation in the pharmacy drug disposal program nor shall such person be liable for acts of simple negligence in the collection, storage, or destruction of prescription drugs collected through such pharmacy drug disposal program, provided that the pharmacy practice site is acting in good faith and in accordance with applicable state and federal law and regulations.

2016, c. 95.

§ 54.1-3412. Date of dispensing; initials of pharmacist; automated data processing system

Pursuant to regulations promulgated by the Board, the pharmacist dispensing any prescription shall record the date of dispensing and his initials on the prescription in (i) an automated data processing system used for the storage and retrieval of dispensing information for prescriptions or (ii) on another record that is accurate from which dispensing information is retrievable and in which the original prescription and any information maintained in such data processing system concerning such prescription can be found.

1970, c. 650, § 54-524.69; 1979, c. 388; 1987, c. 198; 1988, c. 765; 2002, c. 411.

§ 54.1-3413. Manufacturing and administering Schedule I drugs

It shall be lawful for a person to manufacture, and for a practitioner to administer, Schedule I drugs if:

1. The manufacturer and practitioner are expressly authorized to engage in such activities by the Attorney General of the United States, or pursuant to the federal Food, Drug and Cosmetic Act;

2. The manufacturer or dispenser is registered under all appropriate provisions of this chapter;

3. Any Schedule I drug so manufactured is sold or furnished on an official written order to a practitioner or other authorized person only; and

4. The manufacturer and practitioner comply with all other requirements of this chapter.

1970, c. 650, § 54-524.58:1; 1972, c. 798; 1988, c. 765.

§ 54.1-3414. Official orders for Schedule II drugs

An official written order for any Schedule II drug shall be signed by the purchasing licensee or by his agent. The original shall be presented to the person who supplies the drug or drugs. If such person accepts the order, each party to the transaction shall preserve his copy of the order for two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal laws respecting the requirements governing the use of order forms. Parties ordering Schedule II drugs electronically shall comply with all requirements of federal law and regulation governing such transactions.

Code 1950, § 54-493; 1970, c. 650, § 54-524.60; 1988, c. 765; 2006, c. 346.

§ 54.1-3415. Distribution of drugs in Schedules II through VI by manufacturers and wholesalers

A. A permitted manufacturer or wholesaler may distribute Schedule II drugs to any of the following persons, but only on official written orders or pursuant to an electronic order in compliance with federal laws and regulations governing the electronic ordering of Schedule II drugs:

1. To a manufacturer or wholesaler who has been issued permits pursuant to this chapter;

2. To a licensed pharmacist, permitted pharmacy or a licensed practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine;

3. To a person who has been issued a controlled substance registration certificate pursuant to § 54.1-3422, if the certificate of such person authorizes such purchase;

4. On a special written order accompanied by a certificate of exemption, as required by the federal laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving or possessing drugs by reason of his official duties;

5. To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port. However, such drugs shall be sold to a master of such ship or person in charge of such aircraft pursuant to a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service; and

6. To a person in a foreign country in compliance with the provisions of the relevant federal laws.

B. A permitted manufacturer or wholesaler may distribute drugs classified in Schedule III through Schedule VI and devices to all persons listed in subsection A of this section without an official written order. However, this section shall not be construed to prohibit the distribution of a Schedule VI drug or device to any person who is otherwise authorized by law to administer, prescribe or dispense such drug or device.

Code 1950, § 54-492; 1970, c. 650; 1972, c. 798, § 54-524.59; 1977, c. 302; 1978, c. 833; 1988, c. 765; 1998, c. 490; 2006, c. 346.

§ 54.1-3416. No prescription for preparations listed pursuant to Schedule V

A preparation listed pursuant to Schedule V may be dispensed without a prescription if:

1. The preparation is dispensed only by a pharmacist directly to the person requesting the preparation;

2. The preparation is dispensed only to a person who is at least eighteen years of age;

3. The pharmacist requires the person requesting the preparation to furnish suitable identification including proof of age when appropriate;

4. The pharmacist does not dispense to any one person, or for the use of any one person or animal, any narcotic drug preparation or preparations, when he knows, or can by reasonable diligence ascertain, that such dispensing will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is dispensed, within 48 consecutive hours, with more than 200 milligrams of opium, or more than 270 milligrams of codeine, or more than 130 milligrams of dihydrocodeinone, or more than 65 milligrams of ethylmorphine, or more than 32 5/10 milligrams of diphenoxylate. In dispensing such a narcotic drug preparation, the pharmacist shall exercise professional discretion to ensure that the preparation is being dispensed for medical purposes only.

Any pharmacist shall, at the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the preparation, the name and address of the person to whom the preparation is dispensed, and enter his initials thereon. Such records shall be maintained as set forth in § 54.1-3404 and the regulations of the Board.

1970, c. 650, § 54-524.75; 1972, c. 798; 1988, c. 765.

§ 54.1-3417. Disposing of stocks of Schedules II through V drugs

The owner of any stocks of drugs included in Schedules II through V obtained in compliance with this chapter, upon discontinuance of dealing in such drugs, may dispose of such stocks only on an official written order as follows:

1. A pharmacy or practitioner or an agent or agents of a pharmacy or practitioner under specific written authorization from the owner of such pharmacy or such practitioner, may dispose of such stocks to a manufacturer or wholesaler holding a valid license to deal in such drugs, or to another pharmacy or practitioner.

2. A manufacturer or wholesaler may dispose of such stocks only to a manufacturer or wholesaler holding a valid permit to deal in such drugs.

1970, c. 650, § 54-524.61; 1976, c. 406; 1988, c. 765.

§ 54.1-3418. Sale of aqueous or oleaginous solutions

A pharmacist, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions compounded by the pharmacist, of which the content of narcotic drugs does not exceed a proportion greater than twenty percent of the complete solution, to be used for medical purposes.

Code 1950, § 54-496; 1956, c. 225; 1970, c. 650, § 54-524.62; 1988, c. 765.

§ 54.1-3419. Dispensing of insulin preparations

Any insulin preparation shall be dispensed only by or under the supervision of a licensed pharmacist.

1984, c. 723, § 54-524.67:3; 1988, c. 765.

§ 54.1-3420. Distribution of certain drugs; written request or confirmation of receipt

No manufacturer or distributor of controlled substances shall distribute or dispense any substance listed on Schedules II through V to any person, whether a practitioner of the healing arts or some other profession, except with the written request or confirmation of receipt of the practitioner. Such request or confirmation shall be maintained as required by this chapter.

Subject to the foregoing provisions, no person shall be prohibited from distributing controlled substances listed on Schedules II through V for charitable uses or for use in research or investigations.

1984, c. 724, § 54-524.58:2; 1988, c. 765.

§ 54.1-3420.1. Identification required for filling prescriptions

A. Before dispensing any drug listed on Schedules III through V, a pharmacist may require proof of identity from any patient presenting a prescription or requesting a refill of a prescription.

B. A pharmacist, or his agent, shall require proof of identity at the time of delivery from any person seeking to take delivery of any drug listed on Schedule II pursuant to a valid prescription, unless such person is known to the pharmacist or to his agent. If the person seeking to take delivery of a drug listed on Schedule II pursuant to a valid prescription is not the patient for whom the drug is prescribed, and the person is not known to the pharmacist or his agent, the pharmacist or his agent shall either make a photocopy or electronic copy of such person's identification or record the full name and address of such person. The pharmacist shall keep records of the names and addresses or copies of proof of identity of persons taking delivery of drugs as required by this subsection for a period of at least one month. For the purposes of this subsection, "proof of identity" means a driver's license, government-issued identification card, or other photo identification along with documentation of the person's current address.

C. Whenever any pharmacist permitted to operate in the Commonwealth or nonresident pharmacist registered to conduct business in the Commonwealth delivers a prescription drug order for any drug listed on Schedule II by mail, common carrier, or delivery service to a Virginia address, the method of delivery employed shall require the signature of the recipient as confirmation of receipt.

1988, c. 400, § 54-524.67:4; 2010, c. 193; 2011, cc. 262, 318.

§ 54.1-3420.2. Delivery of prescription drug order

A. Whenever any pharmacy permitted to operate in this Commonwealth or nonresident pharmacy registered to conduct business in the Commonwealth delivers a prescription drug order by mail, common carrier, or delivery service, when the drug order is not personally hand delivered directly, to the patient or his agent at the person's residence or other designated location, the following conditions shall be required:

1. Written notice shall be placed in each shipment alerting the consumer that under certain circumstances chemical degradation of drugs may occur; and

2. Written notice shall be placed in each shipment providing a toll-free or local consumer access telephone number which is designed to respond to consumer questions pertaining to chemical degradation of drugs.

B. If a prescription drug order for a Schedule VI controlled substance is not personally hand delivered directly to the patient or the patient's agent, or if the prescription drug order is not delivered to the residence of the patient, the delivery location shall hold a current permit, license, or registration with the Board that authorizes the possession of controlled substances at that location. The Board shall promulgate regulations related to the security, access, required records, accountability, storage, and accuracy of delivery of such drug delivery systems. Schedule II through Schedule V controlled substances shall be delivered to an alternate delivery location only if such delivery is authorized by federal law and regulations of the Board.

C. Prescription drug orders dispensed to a patient and delivered to a community services board or behavioral health authority facility licensed by the Department of Behavioral Health and Developmental Services upon the signed written request of the patient or the patient's legally authorized representative may be stored, retained, and repackaged at the facility on behalf of the patient for subsequent delivery or administration. The repackaging of a dispensed prescription drug order retained by a community services board or behavioral health authority facility for the purpose of assisting a client with self-administration pursuant to this subsection shall only be performed by a pharmacist, pharmacy technician, nurse, or other person who has successfully completed a Board-approved training program for repackaging of prescription drug orders as authorized by this subsection. The Board shall promulgate regulations relating to training, packaging, labeling, and recordkeeping for such repackaging.

D. Prescription drug orders dispensed to a patient and delivered to a Virginia Department of Health or local health department clinic upon the signed written request of a patient, a patient's legally authorized representative, or a Virginia Department of Health district director or his designee may be stored and retained at the clinic on behalf of the patient for subsequent delivery or administration.

E. Prescription drug orders dispensed to a patient and delivered to a program of all-inclusive care for the elderly (PACE) site licensed by the Department of Social Services pursuant to § 63.2-1701 and overseen by the Department of Medical Assistance Services in accordance with § 32.1-330.3 upon the signed written request of the patient or the patient's legally authorized representative may be stored, retained, and repackaged at the site on behalf of the patient for subsequent delivery or administration. The repackaging of a dispensed prescription drug order retained by the PACE site for the purpose of assisting a client with self-administration pursuant to this subsection shall only be performed by a pharmacist, pharmacy technician, nurse, or other person who has successfully completed a Board-approved training program for repackaging of prescription drug orders as authorized by this subsection. The Board shall promulgate regulations relating to training, packaging, labeling, and recordkeeping for such repackaging.

1998, c. 597; 2002, c. 411; 2010, c. 28; 2015, c. 505.

§ 54.1-3421. New drugs

A. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless an application with respect to the drug has been approved and the approval has not been withdrawn under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355).

B. This section shall not apply to a drug subject to the federal act intended solely for investigational use and for which a notice of claimed investigational exemption for a new drug has been filed with the U.S. Food and Drug Administration in accordance with 21 C.F.R. Part 312.

1970, c. 650, § 54-524.95; 1988, c. 765; 2000, c. 135.

§ 54.1-3422. Controlled substances registration certificate required in addition to other requirements; exemptions

A. Every person who manufactures, distributes or dispenses any substance that is controlled in Schedules I through V or who proposes to engage in the manufacture, distribution or dispensing of any such controlled substance except permitted pharmacies, those persons who are licensed pharmacists, those persons who are licensed physician assistants, and those persons who are licensed practitioners of medicine, osteopathy, podiatry, dentistry, optometry, nursing, or veterinary medicine shall obtain annually a controlled substances registration certificate issued by the Board. This registration shall be in addition to other licensing or permitting requirements enumerated in this chapter or otherwise required by law.

B. Registration under this section and under all other applicable registration requirements shall entitle the registrant to possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by this registration and in conformity with the other provisions of this chapter.

C. The following persons need not register and may possess controlled substances listed on Schedules I through VI:

1. An agent or employee of any holder of a controlled substance registration certificate or of any practitioner listed in subsection A of this section as exempt from the requirement for registration, if such agent or employee is acting in the usual course of his business or employment;

2. A common or contract carrier or warehouseman, or his employee, whose possession is in the usual course of business or employment; or

3. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a prescriber or in lawful possession of a Schedule V substance.

D. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

1972, c. 798, § 54-524.47:2; 1988, c. 765; 1996, cc. 408, 468, 496; 1998, c. 490; 2001, cc. 243, 465.

§ 54.1-3423. Board to issue registration unless inconsistent with public interest; authorization to conduct research; application and fees

A. The Board shall register an applicant to manufacture or distribute controlled substances included in Schedules I through V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Board shall consider the following factors:

1. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

2. Compliance with applicable state and local law;

3. Any convictions of the applicant under any federal and state laws relating to any controlled substance;

4. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

5. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

6. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

7. Any other factors relevant to and consistent with the public health and safety.

B. Registration under subsection A does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

C. Practitioners must be registered to conduct research with controlled substances in Schedules II through VI. Practitioners registered under federal law to conduct research with Schedule I sub-

stances may conduct research with Schedule I substances within this Commonwealth upon furnishing the evidence of that federal registration.

D. The Board may register other persons or entities to possess controlled substances listed on Schedules II through VI upon a determination that (i) there is a documented need, (ii) the issuance of the registration is consistent with the public interest, (iii) the possession and subsequent use of the controlled substances complies with applicable state and federal laws and regulations, and (iv) the subsequent storage, use, and recordkeeping of the controlled substances will be under the general supervision of a licensed pharmacist, practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine as specified in the Board's regulations. The Board shall consider, at a minimum, the factors listed in subsection A of this section in determining whether the registration shall be issued. Notwithstanding the exceptions listed in § 54.1-3422 A, the Board may mandate a controlled substances registration for sites maintaining certain types and quantities of Schedules II through VI controlled substances as it may specify in its regulations. The Board shall promulgate regulations related to requirements or criteria for the issuance of such controlled substances registration, storage, security, supervision, and recordkeeping.

E. The Board may register a public or private animal shelter as defined in § 3.2-6500 to purchase, possess, and administer certain Schedule II-VI controlled substances approved by the State Veterinarian for the purpose of euthanizing injured, sick, homeless, and unwanted domestic pets and animals; and to purchase, possess, and administer certain Schedule VI controlled substances for the purpose of preventing, controlling, and treating certain communicable diseases that failure to control would result in transmission to the animal population in the shelter. The drugs used for euthanasia shall be administered only in accordance with protocols established by the State Veterinarian and only by persons trained in accordance with instructions by the State Veterinarian. The list of Schedule VI drugs used for treatment and prevention of communicable diseases within the shelter shall be determined by the supervising veterinarian of the shelter and the drugs shall be administered only pursuant to written protocols established or approved by the supervising veterinarian of the shelter and only by persons who have been trained in accordance with instructions established or approved by the supervising veterinarian. The shelter shall maintain a copy of the approved list of drugs, written protocols for administering, and training records of those persons administering drugs on the premises of the shelter.

F. The Board may register a crisis stabilization unit established pursuant to § 37.2-500 or 37.2-601 and licensed by the Department of Behavioral Health and Developmental Services to maintain a stock of Schedule VI controlled substances necessary for immediate treatment of patients admitted to the crisis stabilization unit, which may be accessed and administered by a nurse pursuant to a written or oral order of a prescriber in the absence of a prescriber. Schedule II through Schedule V controlled substances shall only be maintained if so authorized by federal law and Board regulations.

G. Applications for controlled substances registration certificates and renewals thereof shall be made on a form prescribed by the Board and such applications shall be accompanied by a fee in an amount to be determined by the Board.

H. Upon (i) any change in ownership or control of a business, (ii) any change of location of the controlled substances stock, (iii) the termination of authority by or of the person named as the responsible party on a controlled substances registration, or (iv) a change in the supervising practitioner, if applicable, the registrant or responsible party shall immediately surrender the registration. The registrant shall, within 14 days following surrender of a registration, file a new application and, if applicable, name the new responsible party or supervising practitioner.

1972, c. 798, § 54-524.47:3; 1978, c. 833; 1980, c. 288; 1988, c. 765; 1996, cc. 468, 496; 1998, c. 490; 2009, cc. 149, 169; 2010, c. 28; 2014, c. 148.

§ 54.1-3424. Suspension or revocation of registration, license or permit; limitation to particular controlled substance; controlled substances placed under seal; sale of perishables and forfeiture; notification to DEA

A. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Board upon a finding that the registrant:

1. Has furnished false or fraudulent material information in an application filed under this chapter;

2. Has been convicted of a felony under any state or federal law relating to any controlled substance;

3. Has had his federal registration to manufacture, distribute or dispense controlled substances suspended or revoked;

4. Has violated or cooperated with others in violating any provision of this chapter or regulations of the Board relating to the manufacture, distribution or dispensing of controlled substances.

B. The Board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

C. If the Board suspends or revokes a registration, or if the license or permit of a person possessing controlled substances under an exemption in § 54.1-3422 A is suspended or revoked by the issuing board, all controlled substances owned or possessed by the registrant, licensee or permittee at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances shall be forfeited to the Commonwealth.

D. The Board shall promptly notify the DEA of all orders suspending or revoking registration and all forfeitures of controlled substances.

1972, c. 798, § 54-524.47:4; 1988, c. 765; 1996, cc. 468, 496; 1998, c. 490.

§ 54.1-3425. Repealed

Repealed by Acts 2009, c. 149, cl. 2, effective March 6, 2009, and c. 169, cl. 2, effective March 23, 2009.

§ 54.1-3426. Regulations for special packaging

A. The Board shall adopt standards for special packaging consistent with those promulgated pursuant to the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. § 1471 et seq.). The Board may exempt any drug from the requirements of special packaging and shall exempt any drug exempted pursuant to the Poison Prevention Packaging Act of 1970.

B. A prescriber or a purchaser may direct that a drug, which is subject to being dispensed in special packaging, be dispensed in other than special packaging.

1978, c. 833, § 54-524.67:1; 1988, c. 765; 1996, c. 408.

§ 54.1-3427. Dispensing drugs without safety closure container

When a pharmacist receives the request of any person that a drug or drugs for such person to be dispensed by the pharmacist not be placed in a safety closure container, the pharmacist may dispense such drug or drugs in such nonsafety closure container. The delivering pharmacist shall not be civilly liable simply by reason of dispensing a drug or drugs in such a container if the recipient signs a release covering a period of time or a single delivery, which release provides that the recipient releases the pharmacist from civil liability for not using the safety closure container, unless the pharmacist acted with willful and wanton disregard of safety.

1978, c. 839, § 54-524.67:2; 1988, c. 765.

§ 54.1-3428. Dissemination of information

The Board may disseminate such information regarding drugs, devices, and cosmetics as the Board deems necessary in the interest of public health and the protection of the consumer against fraud. This section shall not be construed to prohibit the Board from collecting, reporting, and illustrating the results of its investigations.

1970, c. 650, § 54-524.100; 1988, c. 765.

§ 54.1-3429. Revocation of permit issued to manufacturer, wholesaler or distributor

The Board may revoke a permit issued to a manufacturer, wholesaler or distributor for failure to comply with regulations promulgated pursuant to the provisions of this chapter.

1970, c. 650, § 54-524.46; 1988, c. 765.

§ 54.1-3430. Display of permit; permits nontransferable; renewal

Permits issued under the provisions of this chapter shall be displayed in a conspicuous place in the factory or other place of business for which issued.

Permits shall not be transferable and shall be renewed annually.

Code 1950, §§ 54-449, 54-450; 1970, c. 650, § 54-524.38; 1976, c. 614, § 54-524.39; 1988, c. 765.

§ 54.1-3431. Admission into evidence of certain certificates of analysis

In any administrative hearing, a certificate of analysis of a chemist, performed in any laboratory operated by the Department of Forensic Science or authorized by such Department to conduct such analysis, when such certificate is attested by such chemist, shall be admissible as evidence. A copy of such certificate shall be delivered to the parties in interest at least seven days prior to the date fixed for the hearing.

Any certificate of analysis purporting to be signed by any chemist shall be admissible as evidence in such hearing without any proof of the seal or signature or of the official character of the chemist whose name is signed to it.

Code 1950, § 54-524.77; 1970, c. 650; 1972, cc. 741, 798, § 54-524.77:1; 1973, c. 479; 1977, c. 633; 1988, c. 765; 1990, c. 825; 2005, cc. 868, 881.

Article 2 - PERMITTING OF PHARMACIES

§ 54.1-3432. Supervision by pharmacist

Every pharmacy shall be under the personal supervision of a pharmacist on the premises of the pharmacy.

Code 1950, § 54-478; 1958, c. 551; 1970, c. 650, § 54-524.51; 1988, c. 765.

§ 54.1-3433. Certain advertising and signs unlawful

It shall be unlawful for any place of business which is not a pharmacy as defined in this chapter to advertise or to have upon it or in it as a sign the words, "pharmacy," "pharmacist," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled" or any like words indicating that drugs are compounded or sold or prescriptions filled. Each day during which such advertisement appears or such sign is allowed to remain upon or in such place of business shall constitute a separate offense under this section. Upon consultation with the Department of Historic Resources, the Board may grant an exception from this section for such signage on an historic building that formerly housed a drugstore or pharmacy if that building is individually listed as a Virginia Historic Landmark, a contributing property in a Virginia Historic Landmark District, or determined to be eligible for listing by the Department of Historic Resources, provided that the signage relates to the historic character of the building.

Code 1950, § 54-477; 1970, c. 650, § 54-524.49; 1988, c. 765; 2005, c. 97.

§ 54.1-3434. Permit to conduct pharmacy

No person shall conduct a pharmacy without first obtaining a permit from the Board.

The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmacy and who will be fully engaged in the practice of pharmacy at the location designated on the application.

The application shall (i) show the corporate name and trade name, (ii) list any pharmacist in addition to the pharmacist-in-charge practicing at the location indicated on the application, and (iii) list the hours during which the pharmacy will be open to provide pharmacy services. Any change in the hours of operation, which is expected to last more than one week, shall be reported to the Board in writing and posted, at least fourteen days prior to the anticipated change, in a conspicuous place to provide notice to the public. The Board shall promulgate regulations to provide exceptions to this prior notification.

If the owner is other than the pharmacist making the application, the type of ownership shall be indicated and shall list any partner or partners, and, if a corporation, then the corporate officers and directors. Further, if the owner is not a pharmacist, he shall not abridge the authority of the pharmacist-in-charge to exercise professional judgment relating to the dispensing of drugs in accordance with this act and Board regulations.

The permit shall be issued only to the pharmacist who signs the application as the pharmacist-in-charge and as such assumes the full responsibilities for the legal operation of the pharmacy. This permit and responsibilities shall not be construed to negate any responsibility of any pharmacist or other person.

Upon termination of practice by the pharmacist-in-charge, or upon any change in partnership composition, or upon the acquisition, as defined in Board regulations, of the existing corporation by another person or the closing of a pharmacy, the permit previously issued shall be immediately surrendered to the Board by the pharmacist-in-charge to whom it was issued, or by his legal representative, and an application for a new permit may be made in accordance with the requirements of this chapter.

The Board shall promulgate regulations (i) defining acquisition of an existing permitted, registered or licensed facility or of any corporation under which the facility is directly or indirectly organized; (ii) providing for the transfer, confidentiality, integrity, and security of the pharmacy's prescription dispensing records and other patient records, regardless of where located; and (iii) establishing a reasonable time period for designation of a new pharmacist-in-charge. At the conclusion of the time period for designation of a new pharmacist-in-charge, a pharmacy which has failed to designate a new pharmacist-in-charge shall not operate as a pharmacy nor maintain a stock of prescription drugs on the premises. The Director shall immediately notify the owner of record that the pharmacy no longer holds a valid permit and that the owner shall make provision for the proper disposition of all Schedule II through VI drugs and devices on the premises within fifteen days of receipt of this notice. At the conclusion of the fifteen-day period, the Director or his authorized agent shall seize and indefinitely secure all Schedule II through VI drugs and devices still on the premises, and notify the owner of such seizure. The Director may properly dispose of the seized drugs and devices after six months from the date of the notice of seizure if the owner has not claimed and provided for the proper disposition of the property. The Board shall assess a fee of not less than the cost of storage of said drugs upon the owner for reclaiming seized property.

The succeeding pharmacist-in-charge shall cause an inventory to be made of all Schedule I, II, III, IV and V drugs on hand. Such inventory shall be completed as of the date he becomes pharmacist-in-charge and prior to opening for business on that date.

The pharmacist to whom such permit is issued shall provide safeguards against diversion of all controlled substances.

An application for a pharmacy permit shall be accompanied by a fee determined by the Board. All permits shall expire annually on a date determined by the Board in regulation.

Every pharmacy shall be equipped so that prescriptions can be properly filled. The Board of Pharmacy shall prescribe the minimum of such professional and technical equipment and reference material which a pharmacy shall at all times possess. Nothing shall prevent a pharmacist who is eligible to receive information from the Prescription Monitoring Program from requesting and receiving such information; however, no pharmacy shall be required to maintain Internet access to the Prescription Monitoring Program. No permit shall be issued or continued for the conduct of a pharmacy until or unless there is compliance with the provisions of this chapter and regulations promulgated by the Board.

Every pharmacy shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

Each day during which a person is in violation of this section shall constitute a separate offense.

1970, c. 650, § 54-524.31; 1972, c. 798; 1976, c. 614; 1977, c. 302; 1980, c. 288; 1983, c. 286; 1986, c. 207; 1988, cc. 445, 765; 1994, c. 299; 1998, c. 470; 2000, c. 135; 2008, c. 320; 2011, c. 610; 2016, c. 221.

§ 54.1-3434.01. Notice of pharmacy closing; change of ownership; penalty

A. Prior to the closing of a pharmacy for more than one week, the owner shall either (i) post a conspicuous notice at least thirty days prior to the anticipated closing or (ii) mail a notice, at least fourteen days prior to the anticipated closing, to every current pharmacy customer having refill authority. Each notice posted or mailed pursuant to this section shall indicate the date of such closing, if available, and the name of the pharmacy to which prescriptions and other required prescription dispensing records and individual patient records will be transferred unless patients indicate their preference to the contrary. The Board of Pharmacy shall promulgate regulations providing for a definition of "closing of a pharmacy" and exceptions to the requirements of this section.

B. Upon any change of ownership of a pharmacy, regardless of how such change may be effectuated, the prescription dispensing records and other patient records for at least two years immediately prior to the change of ownership, shall be transferred, in accordance with Board regulations, to the new owner in a manner to ensure the confidentiality, integrity, and security of

the pharmacy's prescription dispensing records and other patient records and the continuity of pharmacy services at substantially the same level as that offered by the previous owner.

Refusing to process a request for the prescription dispensing records and other patient records tendered in accordance with law or regulation shall constitute a closing and the requirements of this section shall apply. Such refusal may constitute a violation of § 54. 1-111 A 9, depending on the circumstance.

1992, c. 667; 1994, c. 668; 1998, c. 470.

§ 54.1-3434.02. Automated drug dispensing systems

A. Hospitals licensed pursuant to Title 32.1 or Title 37.2 may use automated drug dispensing systems, as defined in § 54.1-3401, upon meeting the following conditions:

1. Drugs are placed in the automated drug dispensing system in a hospital and are under the control of a pharmacy providing services to the hospital;

2. The pharmacist-in-charge of the pharmacy providing services to the hospital has established procedures for assuring the accurate stocking and proper storage of drugs in the automated drug dispensing system and for ensuring accountability for and security of all drugs utilized in the automated drug dispensing system until the time such drugs are removed from the automated drug dispensing system for administration to the patients;

3. Removal of drugs from any automated drug dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber;

4. Adequate security for automated drug dispensing systems is provided, as evidenced by written policies and procedures, for (i) preventing unauthorized access, (ii) complying with federal and state regulations on prescribing and dispensing controlled substances, (iii) maintaining patient confidentiality, and (iv) assuring compliance with the requirements of this section;

5. Accountability for drugs dispensed from automated drug dispensing systems is vested in the pharmacist-in-charge of a pharmacy located within the hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to the hospital;

6. Filling and stocking of all drugs in automated drug dispensing systems shall be performed under the direction of the pharmacist-in-charge. The task of filling and stocking of drugs into an automated drug dispensing system shall be performed by a pharmacist or a registered pharmacy technician, who shall be an employee of the provider pharmacy and shall be properly trained in accordance with established standards set forth in a policy and procedure manual maintained by the provider pharmacy. The pharmacist stocking and filling the automated drug dispensing system or the pharmacist-in-charge, if the automated drug dispensing system is stocked and filled by a registered pharmacy technician, shall be responsible for the proper and accurate stocking and filling of the automated drug dispensing system.

B. Drugs placed into and removed from automated drug dispensing systems for administration to patients shall be in the manufacturer's or distributor's sealed original packaging or in unit-dose containers packaged by the pharmacy. Drugs in multi-dose packaging, other than those administered orally, may be placed in such a device if approved by the pharmacist-in-charge in consultation with a standing hospital committee comprised of pharmacy, medical, and nursing staff.

C. The pharmacist-in-charge in a pharmacy located within a hospital or the pharmacist-in-charge of any outside pharmacy providing pharmacy services to a hospital shall be responsible for establishing procedures for (i) periodically inspecting and auditing automated drug dispensing systems to assure the proper storage, security, and accountability for all drugs placed in and removed from automated drug dispensing systems, and (ii) reviewing the operation and maintenance of automated drug dispensing systems. This monitoring shall be reviewed by a pharmacist while on the premises of the hospital and in accordance with the pharmacist-in-charge's procedures and the Board of Pharmacy's regulations.

D. The Board of Pharmacy shall promulgate regulations establishing minimum requirements for random periodic inspections and monthly audits of automated drug dispensing systems to assure the proper storage, security, and accountability of all drugs placed in and removed from automated drug dispensing systems and for reviewing the operation and maintenance of automated drug dispensing systems.

1999, c. 750; 2004, c. 140; 2009, c. 100.

§ 54.1-3434.03. Continuous quality improvement program

Each pharmacy shall implement a program for continuous quality improvement, according to regulations of the Board. Such program shall provide for a systematic, ongoing process of analysis of dispensing errors that uses findings to formulate an appropriate response and to develop or improve pharmacy systems and workflow processes designed to prevent or reduce future errors. The Board shall promulgate regulations to further define the required elements of such program.

Any pharmacy that actively reports to a patient safety organization that has as its primary mission continuous quality improvement under the Patient Safety and Quality Improvement Act of 2005 (P.L. 109-41), shall be deemed in compliance with this section.

2011, c. 124.

§ 54.1-3434.04. Automatic review of certain case decisions

The Board of Pharmacy shall, in cases in which a monetary fine may be imposed for a violation of the provisions of Article 2 (§ 54.1-3432 et seq.) of the Drug Control Act relating to the practice of pharmacy and the pharmacy subject to the fine is affiliated with a free clinic that receives state or local funds, ascertain the factual basis for its decisions of such cases through informal conference or consultation proceedings in accordance with § 2.2-4019, unless the named party and the Board agree to resolve the matter through a consent order or the named party consents to waive such a conference or proceeding to go directly to a formal hearing.

2014, c. 345.

§ 54.1-3434.05. Permit to act as an outsourcing facility

A. No person shall act as an outsourcing facility without first obtaining a permit from the Board.

B. Applications for a permit to act as an outsourcing facility shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the outsourcing facility and who will be fully engaged in the compounding performed at the location designated on the application. Such application shall be accompanied by a fee determined by the Board in regulation. All permits shall expire annually on a date determined by the Board in regulation. No permit shall be issued or renewed for an outsourcing facility unless the facility can demonstrate compliance with all applicable federal and state laws and regulations governing outsourcing facilities.

C. As a prerequisite to obtaining or renewing a permit from the Board, the outsourcing facility shall (i) register as an outsourcing facility with the U.S. Secretary of Health and Human Services in accordance with 21 U.S.C. § 353b and (ii) submit a copy of a current inspection report resulting from an inspection conducted by the U.S. Food and Drug Administration that indicates compliance with the requirements of state and federal law and regulations, including all applicable guidance documents and Current Good Manufacturing Practices published by the U.S. Food and Drug Administration.

The inspection report required pursuant to clause (ii) shall be deemed current for the purposes of this section if the inspection was conducted (a) no more than one year prior to the date of submission of an application for a permit to the Board or (b) no more than two years prior to the date of submission of an application for renewal of a permit to the Board. However, if the outsourcing facility has not been inspected by the U.S. Food and Drug Administration within the required period, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board, or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

D. Every outsourcing facility shall compound in compliance with the requirements of state and federal law and regulations except § 54.1-3410.2, to include all applicable guidance documents and Current Good Manufacturing Practices published by the U.S. Food and Drug Administration.

E. An outsourcing facility shall not engage in compounding of drug products to be dispensed pursuant to a valid prescription for a specific patient without first obtaining a permit to operate a pharmacy.

2015, c. 300.

Article 2.1 - REGISTRATION OF NONRESIDENT PHARMACIES

§ 54.1-3434.1. Nonresident pharmacies to register with Board

A. Any pharmacy located outside the Commonwealth that ships, mails, or delivers, in any manner, Schedule II through VI drugs or devices pursuant to a prescription into the Commonwealth shall be considered a nonresident pharmacy, shall be registered with the Board, shall designate a pharmacist in charge who is licensed as a pharmacist in Virginia and is responsible for the pharmacy's compliance with this chapter, and shall disclose to the Board all of the following:

1. The location, names, and titles of all principal corporate officers and the name and Virginia license number of the designated pharmacist in charge, if applicable. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist in charge.

2. That it maintains, at all times, a current unrestricted license, permit, certificate, or registration to conduct the pharmacy in compliance with the laws of the jurisdiction, within the United States or within another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers within the United States, in which it is a resident. The pharmacy shall also certify that it complies with all lawful directions and requests for information from the regulatory or licensing agency of the jurisdiction in which it is licensed as well as with all requests for information made by the Board pursuant to this section.

3. As a prerequisite to registering or renewing a registration with the Board, the nonresident pharmacy shall submit a copy of a current inspection report resulting from an inspection conducted by the regulatory or licensing agency of the jurisdiction in which it is located that indicates compliance with the requirements of this chapter, including compliance with USP-NF standards for pharmacies performing sterile and non-sterile compounding. The inspection report shall be deemed current for the purpose of this subdivision if the inspection was conducted (i) no more than six months prior to the date of submission of an application for registration with the Board or (ii) no more than two years prior to the date of submission of an application for renewal of a registration with the Board. However, if the nonresident pharmacy has not been inspected by the regulatory or licensing agency of the jurisdiction in which it is licensed within the required period, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

4. For a nonresident pharmacy that dispenses more than 50 percent of its total prescription volume pursuant to an original prescription order received as a result of solicitation on the Internet, including the solicitation by electronic mail, that it is credentialed and has been inspected and that it has received certification from the National Association of Boards of Pharmacy that it is a Verified Internet Pharmacy Practice Site, or has received certification from a substantially similar program approved by the Board. The Board may, in its discretion, waive the requirements of this subdivision for a nonresident pharmacy that only does business within the Commonwealth in limited transactions.

5. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to patients in the Commonwealth so that the records are readily retrievable from the records of other drugs dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of a request.

6. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in violation of § 54.1-3303 and that it has informed its pharmacists that a pharmacist who dispenses a prescription that he knows or should have known was not written pursuant to a bona fide practitioner-patient relationship is guilty of unlawful distribution of a controlled substance in violation of § 18.2-248.

7. That it maintains a continuous quality improvement program as required of resident pharmacies, pursuant to § 54.1-3434.03.

The requirement that a nonresident pharmacy have a Virginia licensed pharmacist in charge shall not apply to a registered nonresident pharmacy that provides services as a pharmacy benefits administrator.

B. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in the Commonwealth and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in the Commonwealth.

C. Pharmacies subject to this section shall comply with the reporting requirements of the Prescription Monitoring Program as set forth in § 54.1-2521.

D. The registration fee shall be the fee specified for pharmacies within Virginia.

E. A nonresident pharmacy shall only deliver controlled substances that are dispensed pursuant to a prescription, directly to the consumer or his designated agent, or directly to a pharmacy located in Virginia pursuant to regulations of the Board.

F. Pharmacies subject to this section shall comply with the requirements set forth in § 54.1-3408.04 relating to dispensing of an interchangeable biosimilar in the place of a prescribed biological product.

G. Every nonresident pharmacy shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

1990, c. 270; 1994, c. 300; 2000, c. 882; 2005, cc. 115, 637, 678; 2006, c. 397; 2008, cc. 79, 618; 2011, c. 124; 2013, cc. 412, 544, 765; 2016, c. 221.

§ 54.1-3434.2. Permit to be issued

The Board shall only register nonresident pharmacies that maintain a current unrestricted license, certificate, permit, or registration as a pharmacy in a jurisdiction within the United States, or within another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers within the United States.

Applications for a nonresident pharmacy registration, under this section, shall be made on a form furnished by the Board. The Board may require such information as it deems is necessary to carry out the purpose of the section.

The permit or nonresident pharmacy registration shall be renewed annually on a date determined by the Board in regulation. Renewal is contingent upon the nonresident pharmacy providing documentation of a current inspection report in accordance with subdivision A 3 of § 54.1-3434.1; continuing current, unrestricted licensure in the resident jurisdiction; and continuing certification if required in subdivision A 4 of § 54.1-3434.1.

1990, c. 270; 2005, c. 115; 2008, cc. 79, 320, 618; 2013, c. 765.

§ 54.1-3434.3. Denial, revocation, suspension of registration, summary proceedings

The Board may deny, revoke, suspend, or take other disciplinary actions against a nonresident pharmacy registration as provided for in § 54.1-3316.

The Board shall immediately suspend, without a hearing, the registration of any nonresident pharmacy upon receipt of documentation by the licensing agency in the jurisdiction where a nonresident pharmacy registered with the Board is located, that the nonresident pharmacy has had its license, certificate, permit, or registration as a pharmacy revoked or suspended by that agency and has not been reinstated, or if the Board has received notification from the licensing agency that the pharmacy in the resident state no longer holds a valid unexpired license, permit, certificate, or registration as a pharmacy. The Board shall provide written notice of the suspension to the nonresident pharmacy at the address of record on file with the Board and to the resident-state licensing agency. The nonresident pharmacy may apply for reinstatement of the registration only after it has been reinstated by and holds a current and unrestricted license, certificate, permit, or registration as a pharmacy from the licensing agency in the jurisdiction where it is located. Such nonresident pharmacy shall be entitled to a hearing not later than the next regular meeting of the Board after the expiration of 30 days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify on its behalf.

The Board may summarily suspend the registration of any nonresident pharmacy without a hearing, simultaneously with the institution of proceedings for a hearing, if it finds that there is a substantial danger to the public health or safety that warrants such action. The Board may meet by telephone conference call when summarily suspending the 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 dispensing by the nonresident pharmacy 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. The Board may consider other information concerning possible violations of Virginia law at a hearing, if reasonable notice is given to such nonresident pharmacy of the information.

A nonresident pharmacy with a suspended registration shall not ship, mail, or deliver any Schedule II through VI drugs into the Commonwealth unless reinstated by the Board.

The Board may refer complaints concerning nonresident pharmacies to the regulatory or licensing agency in the jurisdiction where the pharmacy is located. The Board may take other disciplinary action against a nonresident pharmacy in accordance with §§ 54.1-2400 and 54.1-3316 following notice and the opportunity for a hearing.

1990, c. 270; 2005, c. 115; 2007, c. 662.

§ 54.1-3434.4. Prohibited acts

A. It is unlawful for any person or entity which is not registered under this article to (i) conduct the business of shipping, mailing, or otherwise delivering Schedule II through VI controlled substances into Virginia or (ii) advertise the availability for purchase of any Schedule II through VI controlled substances by any citizen of the Commonwealth. Further, it shall be unlawful for any person who is a resident of Virginia to advertise the pharmacy services of a nonresident pharmacy or compounding services of an outsourcing facility that has not registered with the Board, with the knowledge that the advertisement will or is likely to induce members of the public in the Commonwealth to use the pharmacy or outsourcing facility to obtain controlled substances.

B. Any controlled substance that is ordered or shipped in violation of any provision of this chapter, shall be considered as contraband and may be seized by any law-enforcement officer or any agent of the Board of Pharmacy.

1990, c. 270; 2005, c. 115; 2008, cc. 79, 618; 2015, c. 300.

§ 54.1-3434.5. Nonresident outsourcing facilities to register with the Board

A. Any outsourcing facility located outside the Commonwealth that ships, mails, or delivers in any manner Schedule II through VI drugs or devices into the Commonwealth shall be considered a nonresident outsourcing facility and shall be registered with the Board.

B. Applications for registration to act as a non-resident outsourcing facility shall be made on a form provided by the Board and signed by a pharmacist who is licensed as a pharmacist in Virginia and who is in full and actual charge of the outsourcing facility, is fully engaged in the compounding performed at the location stated on the application, and is fully responsible for the outsourcing facility's compliance with state and federal law and regulations. Such application shall be accompanied by a fee determined by the Board in regulation. All registrations shall expire annually on a date determined by the Board in regulation.

C. As a prerequisite to registering or renewing a registration with the Board, the outsourcing facility shall (i) register as an outsourcing facility with the U.S. Secretary of Health and Human Services in accordance with 21 U.S.C. § 353b and (ii) submit a copy of a current inspection report resulting from an inspection conducted by the U.S. Food and Drug Administration that indicates compliance with the requirements of state and federal law and regulations, including all applicable guidance documents and Current Good Manufacturing Practices published by the U.S. Food and Drug Administration.

The inspection report required pursuant to clause (ii) shall be deemed current for the purposes of this section if the inspection was conducted (a) no more than one year prior to the date of submission of an application for registration with the Board or (b) no more than two years prior to the date of submission of an application for renewal of a registration with the Board. However, if the outsourcing facility has not been inspected by the U.S. Food and Drug Administration within the required period, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board, or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

D. A nonresident outsourcing facility shall not engage in compounding of drug products to be dispensed pursuant to a valid prescription for a specific patient without first obtaining a registration to operate a nonresident pharmacy. The nonresident pharmacy shall comply with all state and federal laws, regulations, and requirements except § 54.1-3410.2.

2015, c. 300.

Article 3 - WHOLESALE DISTRIBUTORS AND MEDICAL EQUIPMENT SUPPLIERS

§ 54.1-3435. License to act as wholesale distributor; renewal; fee

A. It shall be unlawful for any person to engage in the wholesale distribution of prescription drugs in the Commonwealth without a valid unrevoked license issued by the Board. The applicant for licensure as a wholesale distributor, as defined in § 54.1-3401, in the Commonwealth shall apply to the Board for a license, using such forms as the Board may furnish; renew such license using such forms as the Board may furnish, if granted, annually on a date determined by the Board in regulation; notify the Board within 30 days of any substantive change in the information reported on the application form previously submitted to the Board; and remit a fee as determined by the Board.

B. A wholesale distributor that ceases distribution of Schedule II through V drugs to a pharmacy, licensed physician dispenser, or licensed physician dispensing facility located in the Commonwealth due to suspicious orders of controlled substances shall notify the Board within five days of the cessation. For the purposes of this section, "suspicious orders of controlled substances" means, relative to the pharmacy's, licensed physician dispenser's, or licensed physician dispensing facility's order history and the order history of similarly situated pharmacies, licensed physician

dispensers, or licensed physician dispensing facilities, (i) orders of unusual size, (ii) orders deviating substantially from a normal pattern, and (iii) orders of unusual frequency.

C. A wholesale distributor shall be immune from civil liability for giving notice in accordance with subsection B unless the notice was given in bad faith or with malicious intent.

D. The Board shall not impose any disciplinary or enforcement action against any licensee or permit holder solely on the basis of a notice received from a wholesale distributor pursuant to subsection B.

E. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs by wholesale distributors as it deems necessary to implement this section, to prevent diversion of prescription drugs, and to protect the public.

F. Every wholesale distributor shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

1970, c. 650, § 54-524.44; 1976, c. 614; 1980, c. 288; 1988, c. 765; 1992, c. 737; 2008, c. 320; 2015, c. 299; 2016, c. 221.

§ 54.1-3435.01. Registration of nonresident wholesale distributors; renewal; fee

A. Any person located outside the Commonwealth who engages in the wholesale distribution of prescription drugs into the Commonwealth shall be registered with the Board. The applicant for registration as a nonresident wholesale distributor shall apply to the Board using such forms as the Board may furnish; renew such registration, if granted, using such forms as the Board may furnish, annually on a date determined by the Board in regulation; notify the Board within 30 days of any substantive change in the information previously submitted to the Board; and remit a fee, which shall be the fee specified for wholesale distributors located within the Commonwealth.

B. The nonresident wholesale distributor shall at all times maintain a valid, unexpired license, permit, or registration in the state in which it is located and shall furnish proof of such upon application and at each renewal.

C. Records of prescription drugs distributed into the Commonwealth shall be maintained in such a manner that they are readily retrievable from records of distributions into other jurisdictions and shall be provided to the Board, its authorized agent, or any agent designated by the Superintendent of State Police upon request within seven days of receipt of such request.

D. A nonresident wholesale distributor that ceases distribution of Schedule II through V drugs to a pharmacy, licensed physician dispenser, or licensed physician dispensing facility located in the Commonwealth due to suspicious orders of controlled substances shall notify the Board within five days of the cessation. For the purposes of this section, "suspicious orders of controlled substances" means, relative to the pharmacy's, licensed physician dispenser's, or licensed physician dispensing facility's order history and the order history of similarly situated pharmacies, licensed

physician dispensers, or licensed physician dispensing facilities, (i) orders of unusual size, (ii) orders deviating substantially from a normal pattern, and (iii) orders of unusual frequency.

E. A nonresident wholesale distributor shall be immune from civil liability for giving notice in accordance with subsection D unless the notice was given in bad faith or with malicious intent.

F. The Board shall not impose any disciplinary or enforcement action against any licensee or permit holder solely on the basis of a notice received from a nonresident wholesale distributor pursuant to subsection D.

G. This section shall not apply to persons who distribute prescription drugs directly to a licensed wholesale distributor located within the Commonwealth.

H. Every nonresident wholesale distributor shall comply with federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed.

1994, c. 300; 2008, c. 320; 2015, c. 299; 2016, c. 221.

§ 54.1-3435.02. Certain permitted pharmacies and medical equipment suppliers exempted

A. A permitted pharmacy may engage in wholesale distributions of small quantities of prescription drugs without being licensed as wholesale distributors when such wholesale distributions are in compliance with federal law as follows: such wholesale distributions of controlled substances do not exceed five percent of the gross annual sales of prescription drugs by the relevant permitted pharmacy or such wholesale distributions of Schedules II through V controlled substances do not exceed five percent of the total dosage units of the Schedule II through V controlled substances dispensed annually by the relevant permitted pharmacy.

B. A permitted medical equipment supplier may engage in wholesale distributions of small quantities of oxygen without being licensed as a wholesale distributor when such wholesale distributions are in compliance with federal law and such distributions do not exceed five percent of the gross annual sales of oxygen by the relevant permitted medical equipment supplier.

2003, c. 509; 2004, c. 854.

§ 54.1-3435.1. Denial, revocation, and suspension of license as wholesale distributor, registration as a nonresident wholesale distributor, or permit as a third-party logistics provider, manufacturer, or nonresident manufacturer

A. The Board may deny, revoke, suspend, or take other disciplinary actions against a wholesale distributor license, nonresident wholesale distributor registration, third-party logistics provider permit, manufacturer permit, or nonresident manufacturer permit as provided for in § 54.1-3316 or the following:

1. Any conviction of the applicant, licensee, or registrant under federal or state laws relating to controlled substances, including, but not limited to, drug samples and wholesale or retail prescription drug distribution;

2. Violations of licensing requirements under previously held licenses;

3. Failure to maintain and make available to the Board or to federal regulatory officials those records required to be maintained by wholesale distributors of prescription drugs; or

4. Violations of the minimum requirements for qualifications, personnel, storage, and handling of prescription drugs and maintenance of prescription drug records as set forth in the federal Drug Supply Chain Security Act of 2013, Title II of P. L. 113-54, and the requirements of Chapter 21 of the Code of Federal Regulations.

B. Wholesale drug distributors, nonresident wholesale drug distributors, third-party logistics providers, manufacturers, and nonresident manufacturers shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures. Such agents shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

1992, c. 737; 1994, c. 300; 2007, c. 662; 2016, c. 221.

§ 54.1-3435.2. Permit to act as medical equipment supplier; storage; limitation; regulations

A. Unless otherwise authorized by this chapter or Chapter 33 (§ 54.1-3300 et seq.) of this title, it shall be unlawful for any person to act as a medical equipment supplier, as defined in § 54.1-3401, in this Commonwealth without a valid unrevoked permit issued by the Board. The applicant for a permit to act as a medical equipment supplier in this Commonwealth shall apply to the Board for a permit, using such form as the Board may furnish; renew such permit, if granted, annually on a date determined by the Board in regulation; and remit a fee as determined by the Board.

B. Prescription drugs received, stored, and distributed by authority of this section shall be limited to those Schedule VI controlled substances with no medicinal properties which are used for the operation and cleaning of medical equipment, solutions for peritoneal dialysis, and sterile water and saline for irrigation.

C. Distribution of any Schedule VI drug or device or of any hypodermic needle or syringe, or medicinal oxygen by authority of this section is limited to delivery to the ultimate user upon lawful order by a prescriber authorized to prescribe such drugs and devices.

D. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs, devices and controlled paraphernalia by medical equipment suppliers as it deems necessary to implement this section, to prevent diversion of prescription drugs and devices and controlled paraphernalia, and to protect the public.

1992, c. 737; 1996, c. 408; 1997, c. 677; 2008, c. 320; 2013, c. 504.

§ 54.1-3435.3. Inspection and audit

Medical equipment suppliers shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures.

1992, c. 737; 2007, c. 662.

§ 54.1-3435.3:1. Registration of nonresident medical equipment suppliers; renewal; fee

A. Any person located outside the Commonwealth other than a nonresident pharmacy registered pursuant to § 54.1-3434.1 that ships, mails, or delivers to a consumer in the Commonwealth any hypodermic syringes or needles, medicinal oxygen, Schedule VI controlled device, those Schedule VI controlled substances with no medicinal properties that are used for the operation and cleaning of medical equipment, sterile water and saline for irrigation, or solutions for peritoneal dialysis pursuant to a lawful order of a prescriber shall be registered with the Board as a nonresident medical equipment supplier. Registration as a nonresident medical equipment supplier shall be renewed by March 1 of each year. Applicants for registration or renewal of a registration shall submit a fee specified by the Board in regulations at the time of registration or renewal. A nonresident medical equipment supplier registered in accordance with this section shall notify the Board within 30 days of any substantive change in the information previously submitted to the Board.

B. The nonresident medical equipment supplier shall at all times maintain a valid, unexpired license, permit, or registration in the state in which it is located, if required by the resident state, and shall furnish proof of such license, permit, or registration upon application for registration or renewal. If the resident state does not require a license, permit, or registration to engage in direct consumer supply of the medical equipment described in subsection A, the applicant shall furnish proof that it meets the minimum statutory and regulatory requirements for medical equipment suppliers in the Commonwealth.

C. Records of distribution of medical equipment described in subsection A into the Commonwealth shall be maintained in such a manner that they are readily retrievable from records of distribution into other jurisdictions and shall be provided to the Board, its authorized agent, or any agent designated by the Superintendent of State Police upon request within seven days of receipt of such request.

2016, c. 88.

§ 54.1-3435.4. Permit to act as warehouser; regulations

A. Unless otherwise authorized by this chapter or Chapter 33 (§ 54.1-3300 et seq.) of this title, it shall be unlawful for any person to act as a warehouser, as defined in § 54.1-3401, in this Commonwealth without a valid unrevoked permit issued by the Board. The applicant for a permit to act as a warehouser in this Commonwealth shall apply to the Board for a permit, using such form as the Board may furnish; renew such permit, if granted, annually on a date determined by the Board in regulation; and remit a fee as determined by the Board.

B. The Board may promulgate such regulations relating to the storage, handling, and distribution of prescription drugs and devices by warehousers as it deems necessary to implement this section, to prevent diversion of prescription drugs and devices, and to protect the public.

C. Warehousers shall allow the Board or its authorized agents to enter and inspect, at reasonable times and in a reasonable manner, their premises and delivery vehicles, and to audit their records and written operating procedures. Such agents shall be required to show appropriate identification prior to being permitted access to warehousers' premises and delivery vehicles.

1992, c. 737; 2008, c. 320.

§ 54.1-3435.4:1. Permitting of third-party logistics provider; renewal

A. It shall be unlawful for any person to operate as a third-party logistics provider in the Commonwealth without a valid, unrevoked permit issued by the Board. The third-party logistics provider shall renew such permit annually on a date determined by the Board in regulation and shall notify the Board within 30 days of any substantive change in the information reported on the application form previously submitted.

B. The Board shall adopt such regulations relating to the requirements to operate as a third-party logistics provider, including the storage, handling, and distribution of prescription drugs by third-party logistics providers, as it deems necessary to prevent diversion of prescription drugs and to protect the public.

2016, c. 221.

§ 54.1-3435.5. Repealed

Repealed by Acts 2007, c. 662, cl. 2.

§ 54.1-3436. Repealed

Repealed by Acts 1992, c. 737 .

Article 4 - PERMITTING OF MANUFACTURERS

§ 54.1-3437. Permit to manufacture drugs

It shall be lawful to manufacture, make, produce, pack, package, repackage, relabel or prepare any drug not controlled by Schedule I after first obtaining the appropriate permit from the Board. Such permits shall be subject to the Board's regulations on sanitation, equipment, and safeguards against diversion, and shall allow the distribution of the drug manufactured, made, produced, packed, packaged, repackaged, relabeled, or prepared to anyone other than the end user without the need to obtain a wholesale distributor permit. This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or package no other drugs.

Code 1950, § 54-448; 1958, c. 551; 1970, c. 650, § 54-524.36; 1988, c. 765; 1996, cc. 37, 407; 2016, c. 221.

§ 54.1-3437.1. Limited permit for repackaging drugs

The Board may issue a limited manufacturing permit for the purpose of repackaging drugs, upon such terms and conditions approved by the Board, to the pharmacy directly operated by the Department of Behavioral Health and Developmental Services and which serves clients of the community services boards.

1997, c. 218; 2009, cc. 813, 840.

§ 54.1-3438. Manufacturing, etc., of drugs or proprietary medicines, to be supervised by pharmacist

No drugs or proprietary medicines shall be manufactured, made, produced, packed, packaged, repackaged, relabeled or prepared within this Commonwealth, except under the personal and immediate supervision of a pharmacist or such other person as may be approved by the Board of Pharmacy after an investigation and a determination by the Board that they are qualified by scientific or technical training to perform such duties or supervision as may be necessary to protect the public health and safety. This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or pack no other drugs. Medicated feeds are hereby defined as products obtained by mixing a commercial feed and a drug.

Code 1950, § 54-447; 1958, c. 551; 1970, c. 650, § 54-524.37; 1976, c. 614; 1988, c. 765; 1996, cc. 37, 407.

§ 54.1-3439. Application for nonrestricted manufacturing permit; fee

Every person desiring to manufacture any drug or proprietary medicines shall annually apply to the Board for a nonrestricted manufacturing permit. The application shall be accompanied by the required fee. Separate applications shall be made and separate permits issued for each specific place of manufacturing. Each such permit shall expire annually on a date determined by the Board in regulation.

1970, c. 650, § 54-524.40; 1972, c. 798; 1976, c. 614; 1980, c. 288; 1988, c. 765; 1996, cc. 37, 407; 2008, c. 320.

§ 54.1-3440. Persons to whom nonrestricted permit is granted

No person shall be granted a nonrestricted permit as a manufacturer unless he is of good moral character and properly equipped as to land, buildings, equipment and safeguards against diversion to carry out the functions of a manufacturer with due regard to the protection of the public safety.

1970, c. 650, § 54-524.41; 1976, c. 614; 1988, c. 765.

§ 54.1-3441. Restricted manufacturing permit; application; fee; separate application and permit for each place of manufacturing

Every person desiring to manufacture a proprietary medicine or to repackage medical gases shall apply to the Board for a restricted manufacturing permit. The application shall be accompanied by the required fee. Separate applications shall be made and separate permits issued for each separate place of manufacturing.

1976, c. 614, § 54-524.41:1; 1980, c. 288; 1988, c. 765; 1996, cc. 37, 407.

§ 54.1-3442. When permit not to be granted; regulations

No person shall be granted a restricted manufacturing permit as a manufacturer unless such person is properly equipped as to buildings and equipment to carry out the functions of a manufacturer with due regard to the protection of the public health. The Board shall promulgate regulations in order to carry out the provisions of this section.

1976, c. 614, § 54-524.41:2; 1988, c. 765.

§ 54.1-3442.01. Registration of nonresident manufacturer; renewal

A. Any manufacturer located outside the Commonwealth who ships prescription drugs into the Commonwealth shall be registered with the Board. The nonresident manufacturer shall renew such registration annually on a date determined by the Board in regulation and shall notify the Board within 30 days of any substantive change in the information previously submitted.

B. The nonresident manufacturer shall at all times maintain a valid, unexpired license, permit, or registration in the state in which it is located or current registration as a manufacturer or repackager with the federal Food and Drug Administration and shall furnish proof of such upon application and at each renewal.

C. Records of prescription drugs distributed into the Commonwealth shall be maintained in such a manner that they are readily retrievable from records of shipments into other jurisdictions and shall be provided to the Board, its authorized agent, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of such request.

2016, c. 221.

Article 4.1 - EXPANDED ACCESS TO INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES

§ 54.1-3442.1. Definitions

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

"Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed Phase I of a clinical trial but has not been approved for general use by the U.S. Food and Drug Administration and remains under investigation in a clinical trial.

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

"Treating physician" means a physician who is providing or has previously provided medical treatment or evaluation to and has or previously had an ongoing treatment relationship with the person.

2015, cc. 655, 656.

§ 54.1-3442.2. Eligibility for expanded access to investigational drugs, biological products, and devices; written, informed consent to treatment

A. A person shall be eligible for expanded access to investigational drugs, biological products, or devices if:

1. He has a terminal condition, attested to by his treating physician and confirmed by a second physician not previously involved in the treatment of the person who has conducted an independent examination of the person;

2. He has, in consultation with his treating physician, considered all other treatment options currently approved by the U.S. Food and Drug Administration and the treating physician has determined that no reasonable opportunity exists for him to participate in an ongoing clinical trial for his terminal condition;

3. The potential benefits of use of the investigational drug, biological product, or device to treat his terminal condition are greater than the potential risks of the use of the investigational drug, biological product, or device to treat his terminal condition;

4. He has received a recommendation from his treating physician for use of an investigational drug, biological product, or device for treatment of his terminal condition; and

5. He or, if he is incapable of making an informed decision, his legally authorized representative has given written informed consent to use of the investigational drug, biological product, or device for treatment of his terminal condition or, if the person is a minor or lacks capacity to provide informed consent, his parent or legal guardian has given written informed consent to the use of the investigational drug, biological product, or device for treatment of his terminal condition.

Documentation indicating that the person meets the criteria for eligibility for expanded access to investigational drugs, biological products, or devices shall be provided by the person's treating physician and shall be included in the person's medical record.

B. Written informed consent to use of an investigational drug, biological product, or device shall include:

1. An explanation of the currently approved products and treatments for the person's terminal condition;

2. A statement that the person has, in consultation with his treating physician, considered all other treatment options currently approved by the U.S. Food and Drug Administration and the treating physician has determined that no reasonable opportunity exists for the person to participate in an ongoing clinical trial for his terminal condition;

3. An explanation of the specific investigational drug, biological product, or device proposed for treatment of the person's terminal condition;

4. A description of possible outcomes resulting from use of the investigational drug, biological product, or device to treat the person's terminal condition, including a statement that new, unanticipated, different, or worse symptoms might result from and death could be hastened by the proposed treatment, based on the treating physician's knowledge of the proposed treatment in conjunction with an awareness of the person's terminal condition;

5. A statement that the person may be required to pay any costs associated with use of the investigational drug, biological product, or device; and

6. A statement that the person or, if the person is a minor or lacks capacity to provide informed consent, his parent or legal guardian consents to the use of the investigational drug, biological product, or device for treatment of his terminal condition.

2015, cc. 655, 656.

§ 54.1-3442.3. Expanded access to investigational drugs, biological products, or devices; cost; insurance coverage

A. A manufacturer of an investigational drug, biological product, or device may make such investigational drug, biological product, or device available to a person who meets the criteria set forth in subsection A of § 54.1-3442.2; however, nothing in this article shall require a manufacturer of an investigational drug, biological product, or device to make such investigational drug, biological product, or device available to such person.

B. A manufacturer that makes an investigational drug, biological product, or device available to a person who meets the criteria set forth in subsection A of § 54.1-3442.2 may provide the investigational drug, biological product, or device to the person free of charge or may require the person to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.

C. An insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis, a corporation providing individual or group accident and sickness subscription contracts, or a health maintenance organization providing a health care plan for health care services may provide coverage for costs related to treatment of a person's terminal condition with an investigational drug, biological product, or device; however, nothing in this article shall require an insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis, a corporation providing individual or group accident and sickness subscription contracts, or a health maintenance organization providing a health care plan for health care services to provide coverage for costs related to treatment of a person's terminal condition with an investigational drug, biological product, or device.

2015, cc. 655, 656.

§ 54.1-3442.4. Limitation of liability

A. Notwithstanding any other provision of law to the contrary, a health care provider as defined in § 8.01-581.1 who recommends an investigational drug, biological product, or device to a person who meets the criteria set forth in subsection A of § 54.1-3442.2 shall be immune from civil liability for any adverse action, condition, or other outcome resulting from the person's use of the investigational drug, biological product, or device.

B. Notwithstanding any other provision of law to the contrary, a manufacturer, distributor, administrator, health care provider as defined in § 8.01-581.1, sponsor, or physician who manufactures, supplies, distributes, administers, prescribes, or recommends an investigational drug, biological product, or device to a person who meets the criteria set forth in § 54.1-3442.2 shall be immune from suit and liability caused by, arising out of, or relating to the design, development, clinical testing and investigation, manufacture, labeling, distribution, sale, purchase, donation, dispensing, prescription, recommendation, administration, efficacy, or use of such investigational drug, biological product, or device made available to such person.

C. No claim or cause of action against a manufacturer, distributor, administrator, health care provider as defined in § 8.01-581.1, sponsor, or physician who manufactures, supplies, distributes, administers, prescribes, or recommends an investigational drug, biological product, or device to a person who meets the criteria set forth in § 54.1-3442.2 shall exist in any state court for claims of property, personal injury, or death caused by, arising out of, or relating to the design, development, clinical testing and investigation, manufacture, labeling, distribution, sale, purchase, donation, dispensing, prescription, recommendation, administration, efficacy, or use of such investigational drug, biological product, or device made available to such person.

D. No health care provider as defined in § 8.01-581.1 who recommends, prescribes, administers, distributes, or supplies an investigational drug, biological product, or device to a person who meets the criteria set forth in § 54.1-3442.2 shall be deemed to have engaged in unprofessional conduct, or shall be adversely affected in any decision relating to licensure, on such grounds.

E. Nothing in this article shall require a person to violate or act in contravention of any federal or state law as such law relates to the prescribing, dispensing, administration, or use of an investigational drug, biological product, or device.

2015, cc. 655, 656.

Article 5 - STANDARDS AND SCHEDULES

§ 54.1-3443. Board to administer article

A. The Board shall administer this article and may add substances to or deschedule or reschedule all substances enumerated in the schedules in this article pursuant to the procedures of the Administrative Process Act (§ 2.2-4000 et seq.). In making a determination regarding a substance, the Board shall consider the following:

1. The actual or relative potential for abuse;

2. The scientific evidence of its pharmacological effect, if known;

3. The state of current scientific knowledge regarding the substance;

4. The history and current pattern of abuse;

5. The scope, duration, and significance of abuse;

6. The risk to the public health;

7. The potential of the substance to produce psychic or physical dependence; and

8. Whether the substance is an immediate precursor of a substance already controlled under this article.

B. After considering the factors enumerated in subsection A, the Board shall make findings and issue a regulation controlling the substance if it finds the substance has a potential for abuse.

C. If the Board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

D. If the Board, in consultation with the Department of Forensic Science, determines the substance shall be placed into Schedule I or II pursuant to § 54.1-3445 or 54.1-3447, the Board may amend its regulations pursuant to Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Prior to making such amendments, the Board shall conduct a public hearing. At least 30 days prior to conducting such hearing, it shall post notice of the hearing on the Virginia Regulatory Town Hall and shall send notice of the hearing to any persons requesting to be notified of a regulatory action. In the notice, the Board shall include a list of all substances it intends to schedule by regulation. The Board shall notify the House Courts of Justice and Senate Courts of Justice Committees of any new substance added to Schedule I or II pursuant to this subsection. Any substance added to Schedule I or II pursuant to this subsection shall remain on Schedule I or II for a period of 18 months. Upon expiration of such 18-month period, such substance shall be descheduled unless a general law is enacted adding such substance to Schedule I or II. Nothing in this subsection shall preclude the Board from adding substances to or descheduling or rescheduling all substances enumerated in the schedules pursuant to the provisions of subsections A, B, and E.

E. If any substance is designated, rescheduled, or descheduled as a controlled substance under federal law and notice of such action is given to the Board, the Board may similarly control the substance under this chapter after the expiration of 120 days from publication in the Federal Register of the final order designating a substance as a controlled substance or rescheduling or descheduling a substance without following the provisions specified in subsections A and B.

F. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 4.1.

G. The Board shall exempt any nonnarcotic substance from a schedule if such substance may, under the provisions of the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) or state law, be lawfully sold over the counter without a prescription.

1972, c. 798, § 54-524.84:1; 1976, c. 614; 1988, c. 765; 1993, c. 866; 1996, c. 408; 2014, cc. 674, 719.

§ 54.1-3444. Controlled substances included by whatever name designated

The controlled substances listed or to be listed in the schedules in this chapter are included by whatever official, common, usual, chemical, or trade name designated.

1972, c. 798, § 54-524.84:2; 1988, c. 765.

§ 54.1-3445. Placement of substance in Schedule I

The Board shall place a substance in Schedule I if it finds that the substance:

1. Has high potential for abuse; and

2. Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

1972, c. 798, § 54-524.84:3; 1988, c. 765.

§ 54.1-3446. Schedule I

The controlled substances listed in this section are included in Schedule I:

1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

Acetylmethadol;

Allylprodine;

Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

Alphameprodine;

Alphamethadol;

Benzethidine;

Betacetylmethadol;

Betameprodine;

Betamethadol;

Betaprodine;

Clonitazene;

Dextromoramide;

Diampromide;

Diethylthiambutene;

Difenoxin;

Dimenoxadol;

Dimepheptanol;

Dimethylthiambutene;

Dioxaphetylbutyrate;

Dipipanone;

Ethylmethylthiambutene;

Etonitazene;

Etoxeridine;

Furethidine;

Hydroxypethidine;

Ketobemidone;

Levomoramide;

Levophenacylmorphan;

Morpheridine;

Noracymethadol;

Norlevorphanol;

Normethadone;

Norpipanone;

Phenadoxone;

Phenampromide;

Phenomorphan;

Phenoperidine;

Piritramide;

Proheptazine;

Properidine;

Propiram;

Racemoramide;

Tilidine;

Trimeperidine.

2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Acetorphine;

Acetyldihydrocodeine;

Benzylmorphine;

Codeine methylbromide;

Codeine-N-Oxide;

Cyprenorphine;

Desomorphine;

Dihydromorphine;

Drotebanol;

Etorphine;

Heroin;

Hydromorphinol;

Methyldesorphine;

Methyldihydromorphine;

Morphine methylbromide;

Morphine methylsulfonate;

Morphine-N-Oxide;

Myrophine;

Nicocodeine;

Nicomorphine;

Normorphine;

Pholcodine;

Thebacon.

3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or

which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position, and geometric isomers):

Alpha-ethyltryptamine (some trade or other names: Monase;a-ethyl-1H-indole-3-ethanamine; 3-2-aminobutyl] indole; a-ET; AET);

4-Bromo-2, 5-dimethoxyphenethylamine (some trade or other names: 2-4-bromo-2, 5-dimethoxyphenyl]-1-aminoethane;alpha-desmethyl DOB; 2C-B; Nexus);

4-Bromo-2, 5-dimethoxyphenethylamine (some trade or other names: 2-4-bromo-2, 5-dimethoxyphenyl]-1-aminoethane;alpha-desmethyl DOB; 2C-B; Nexus);

3, 4-methylenedioxy amphetamine;

5-methoxy-3, 4-methylenedioxy amphetamine;

3, 4, 5-trimethoxy amphetamine;

Alpha-methyltryptamine (other name: AMT);

Bufotenine;

Diethyltryptamine;

Dimethyltryptamine;

4-methyl-2, 5-dimethoxyamphetamine;

2, 5-dimethoxy-4-ethylamphetamine (DOET);

2, 5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

Ibogaine;

5-methoxy-N, N-diisopropyltryptamine (other name: 5-MeO-DIPT);

Lysergic acid diethylamide;

Mescaline;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo -b, d] pyran; Synhexyl);

Peyote;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Psilocybin;

Psilocyn;

Salvinorin A;

Tetrahydrocannabinols, except as present in marijuana and dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration;

Hashish oil (some trade or other names: hash oil; liquid marijuana; liquid hashish);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA);

3, 4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;

3, 4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3, 4 (methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);

N-hydroxy-3, 4-methylenedioxyamphetamine (some other names: N-hydroxy-alpha-methyl-3, 4 (methylenedioxy)phenethylamine, and N-hydroxy MDA);

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA);

4-methoxyamphetamine (some trade or other names: 4-methoxy-a-methylphenethylamine; para-methoxyamphetamine; PMA);

Ethylamine analog of phencyclidine (some other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Pyrrolidine analog of phencyclidine (some other names: 1-(1-phenylcyclohexyl) -pyrrolidine, PCPy, PHP);

Thiophene analog of phencyclidine (some other names: 1-1-(2-thienyl) -cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP);

1-1-(2-thienyl)cyclohexyl]pyrrolidine (other name: TCPy);

3, 4-methylenedioxypyrovalerone (other name: MDPV);

4-methylmethcathinone (other names: mephedrone, 4-MMC);

3, 4-methylenedioxymethcathinone (other name: methylone);

Naphthylpyrovalerone (other name: naphyrone);

4-fluoromethcathinone (other name: flephedrone, 4-FMC);

4-methoxymethcathinone (other names: methedrone; bk-PMMA);

Ethcathinone (other name: N-ethylcathinone);

3, 4-methylenedioxyethcathinone (other name: ethylone);

Beta-keto-N-methyl-3, 4-benzodioxyolybutanamine (other name: butylone);

N, N-dimethylcathinone (other name: metamfepramone);

Alpha-pyrrolidinopropiophenone (other name: alpha-PPP);

4-methoxy-alpha-pyrrolidinopropiophenone (other name: MOPPP);

3, 4-methylenedioxy-alpha-pyrrolidinopropiophenone (other name: MDPPP);

Alpha-pyrrolidinovalerophenone (other name: alpha-PVP);

6, 7-dihydro-5H-indeno-(5, 6-d)-1, 3-dioxol-6-amine (other name: MDAI);

3-fluoromethcathinone (other name: 3-FMC);

4-Ethyl-2, 5-dimethoxyphenethylamine (other name: 2C-E);

4-Iodo-2, 5-dimethoxyphenethylamine (other name: 2C-I);

4-Methylethcathinone (other name: 4-MEC);

4-Ethylmethcathinone (other name: 4-EMC);

N, N-diallyl-5-methoxytryptamine (other name: 5-MeO-DALT);

Beta-keto-methylbenzodioxolylpentanamine (other name: Pentylone, bk-MBDP);

Alpha-methylamino-butyrophenone (other name: Buphedrone);

Alpha-methylamino-valerophenone (other name: Pentedrone);

3, 4-Dimethylmethcathinone (other name: 3.4-DMMC);

4-methyl-alpha-pyrrolidinopropiophenone (other name: MPPP);

4-Iodo-2, 5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (other names: 25-I, 25I-NBOMe);

Methoxetamine (other names: MXE, 3-MeO-2-Oxo-PCE);

4-Fluoromethamphetamine (other name: 4-FMA);

4-Fluoroamphetamine (other name: 4-FA);

2-(2, 5-Dimethoxy-4-methylphenyl)ethanamine (other name: 2C-D);

2-(4-Chloro-2, 5-dimethoxyphenyl)ethanamine (other name: 2C-C);

2-[4-(Ethylthio)-2, 5-dimethoxyphenyl]ethanamine (other name: 2C-T-2);

2-[4-(Isopropylthio)-2, 5-dimethoxyphenyl]ethanamine (other name: 2C-T-4);

2-(2, 5-Dimethoxyphenyl)ethanamine (other name: 2C-H);

2-(2, 5-Dimethoxy-4-nitro-phenyl)ethanamine (other name: 2C-N);

2-(2, 5-Dimethoxy-4-(n)-propylphenyl)ethanamine (other name: 2C-P);

(2-aminopropyl)benzofuran (other name: APB);

(2-aminopropyl)-2, 3-dihydrobenzofuran (other name: APDB);

4-chloro-2, 5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (other names: 2C-C-NBOMe, 25C-NBOMe);

4-bromo-2, 5-dimethoxy-N-[(2-methoxyphenyl)methyl]-benzeneethanamine (other names: 2C-B-NBOMe, 25B-NBOMe);

Acetoxydimethyltryptamine (other names: AcO-Psilocin, AcO-DMT, Psilacetin);

Benocyclidine (other names: BCP, BTCP);

Alpha-pyrrolidinobutiophenone (other name: alpha-PBP);

3, 4-methylenedioxy-N, N-dimethylcathinone (other names: Dimethylone, bk-MDDMA);

4-bromomethcathinone (other name: 4-BMC);

4-chloromethcathinone (other name: 4-CMC);

4-Iodo-2, 5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (other name: 25I-NBOH);

Alpha-Pyrrolidinohexiophenone (other name: alpha-PHP);

Alpha-Pyrrolidinoheptiophenone (other name: PV8).

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

Gamma hydroxybutyric acid (some other names include GHB; gamma hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

Mecloqualone;

Methaqualone.

Etizolam.

5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

Aminorex (some trade or other names; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4, 5-dihydro-5-phenyl-2-oxazolamine);

N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine);

Fenethylline;

Ethylamphetamine;

Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-amino-propiophenone, 2-aminopropiophenone, norephedrone), and any plant material from which Cathinone may be derived;

Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)-propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR 1432);

Cis-4-methylaminorex (other name: cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

N, N-dimethylamphetamine (other names: N, N-alpha-trimethyl-benzeneethanamine, N, N-alpha-trimethylphenethylamine).

6. Any material, compound, mixture or preparation containing any quantity of the following substances:

N-3-methyl-1-(2-phenethyl)-4-piperidyl]-N-phenylpropanamide (other name: 3-methylfentanyl), its optical and geometric isomers, salts, and salts of isomers;

1-methyl-4-phenyl-4-propionoxypiperidine (other name: MPPP), its optical isomers, salts and salts of isomers;

1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (other name: PEPAP), its optical isomers, salts and salts of isomers;

N-1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide (other names: 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine), alpha-methylfentanyl);

N-1-(1-methyl-2-phenethyl)-4-piperidyl]-N-phenylacetamide (other name: acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers;

N-1-(1-methyl-2-2-thienyl)ethyl-4 piperidyl]-N-phenylpropanamide (other name: alpha-methylthiofentanyl), its optical isomers, salts and salts of isomers;

N-1-benzyl-4-piperidyl]N-phenylpropanamide (other name: benzylfentanyl), its optical isomers, salts and salts of isomers;

N-1-(2-hydroxy-2-phenyl) ethyl-4-piperidyl]-N-phenylpropanamide (other name: beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers;

N-3-methyl-1-(2-hydroxy-2-phenethyl)4-piperidyl]-N-phenylpropanamide (other name: beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers;

N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide (other name: 3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers;

N-1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (other name: thienylfentanyl), its optical isomers, salts and salts of isomers;

N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinyl]-propanamide (other name: thiofentanyl), its optical isomers, salts and salts of isomers;

N-(4-fluorophenyl)-N-1-(2-phenethyl)-4-piperidinyl]-propanamide (other name: para-fluoro-fentanyl), its optical isomers, salts and salts of isomers;

Acetyl fentanyl (other name: desmethyl fentanyl).

7. Any substance that contains one or more cannabimimetic agents or that contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and any preparation, mixture, or substance containing, or mixed or infused with, any detectable amount of one or more cannabimimetic agents.

a. "Cannabimimetic agents" includes any substance that is within any of the following structural classes:

2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent;

3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent;

3-(1-naphthoyl)pyrrole with substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent;

1-(1-naphthylmethyl)indene with substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent;

3-phenylacetylindole or 3-benzoylindole with substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent;

3-cyclopropoylindole with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the cyclopropyl ring to any extent;

3-adamantoylindole with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent;

N-(adamantyl)-indole-3-carboxamide with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent; and

N-(adamantyl)-indazole-3-carboxamide with substitution at a nitrogen atom of the indazole ring, whether or not further substituted on the indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent.

b. The term "cannabimimetic agents" includes:

5-(1, 1-Dimethylheptyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47, 497);

5-(1, 1-Dimethylhexyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47, 497 C6 homolog);

5-(1, 1-Dimethyloctyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47, 497 C8 homolog);

5-(1, 1-Dimethylnonyl)-2-[3-hydroxycyclohexyl]-phenol (other name: CP 47, 497 C9 homolog);

1-pentyl-3-(1-naphthoyl)indole (other names: JWH-018, AM-678);

1-butyl-3-(1-naphthoyl)indole (other name: JWH-073);

1-pentyl-3-(2-methoxyphenylacetyl)indole (other name: JWH-250);

1-hexyl-3-(naphthalen-1-oyl)indole (other name: JWH-019);

1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (other name: JWH-200);

(6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-te trahy-drobenzo[c]chromen-1-ol (other name: HU-210);

1-pentyl-3-(4-methoxy-1-naphthoyl)indole (other name: JWH-081);

1-pentyl-3-(4-methyl-1-naphthoyl)indole (other name: JWH-122);

1-pentyl-3-(2-chlorophenylacetyl)indole (other name: JWH-203);

1-pentyl-3-(4-ethyl-1-naphthoyl)indole (other name: JWH-210);

1-pentyl-3-(4-chloro-1-naphthoyl)indole (other name: JWH-398);

1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (other name: AM-694);

1-((N-methylpiperidin-2-yl)methyl)-3-(1-naphthoyl)indole (other name: AM-1220);

1-(5-fluoropentyl)-3-(1-naphthoyl)indole (other name: AM-2201);

1-[(N-methylpiperidin-2-yl)methyl]-3-(2-iodobenzoyl)indole (other name: AM-2233);

Pravadoline (4-methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone (other name: WIN 48, 098);

1-pentyl-3-(4-methoxybenzoyl)indole (other names: RCS-4, SR-19);

1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole (other names: RCS-8, SR-18);

1-pentyl-3-(2, 2, 3, 3-tetramethylcyclopropylmethanone)indole (other name: UR-144);

1-(5-fluoropentyl)-3-(2, 2, 3, 3-tetramethylcyclopropylmethanone)indole (other name: XLR-11);

N-adamantyl-1-fluoropentylindole-3-carboxamide (other name: STS-135);

N-adamantyl-1-pentylindazole-3-carboxamide (other name: AKB48);

1-pentyl-3-(1-adamantoyl)indole (other name: AB-001);

(8-quinolinyl)(1-pentylindol-3-yl)carboxylate (other name: PB-22);

(8-quinolinyl)(1-(5-fluoropentyl)indol-3-yl)carboxylate (other name: 5-fluoro-PB-22);

(8-quinolinyl)(1-cyclohexylmethyl-indol-3-yl)carboxylate (other name: BB-22);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide (other name: AB-PINACA);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide (other name: AB-FUBINACA);

1-(5-fluoropentyl)-3-(1-naphthoyl)indazole (other name: THJ-2201);

N-(1-amino-3, 3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide (other name: ADB-PINACA);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other name: AB-CHMINACA);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide (other name: 5-fluoro-AB-PINACA);

N-(1-amino-3, 3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other names: ADB-CHMINACA, MAB-CHMINACA);

Methyl-2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (other name: 5-fluoro-AMB);

1-naphthalenyl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (other name: NM-2201);

1-(4-fluorobenzyl)-3-(2, 2, 3, 3-tetramethylcyclopropylmethanone)indole (other name: FUB-144);

1-(5-fluoropentyl)-3-(4-methyl-1-naphthoyl)indole (other name MAM-2201).

1972, c. 798, § 54-524.84:4; 1973, c. 479; 1976, c. 614; 1977, c. 302; 1979, cc. 387, 435; 1982, c. 505; 1984, cc. 186, 192; 1986, c. 463; 1988, c. 765; 1994, c. 763; 1996, c. 408; 1997, c. 594; 1999, c. 722; 2000, c. 348; 2005, c. 119; 2008, c. 59; 2011, cc. 384, 410; 2012, cc. 762, 816; 2013, cc. 295, 785; 2014, cc. 674, 719; 2015, cc. 726, 757; 2016, cc. 103, 112.

§ 54.1-3447. Placement of substance in Schedule II

The Board shall place a substance in Schedule II if it finds that:

1. The substance has high potential for abuse;

2. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

3. The abuse of the substance may lead to severe psychic or physical dependence.

1972, c. 798, § 54-524.84:5; 1988, c. 765.

§ 54.1-3448. Schedule II

The controlled substances listed in this section are included in Schedule II:

1. Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone naltrexone and their respective salts, but including the following:

Raw opium;

Opium extracts;

Opium fluid extracts;

Powdered opium;

Granulated opium;

Tincture of opium;

Codeine;

Dihydroetorphine;

Ethylmorphine;

Etorphine hydrochloride;

Hydrocodone;

Hydromorphone;

Metopon;

Oripavine (3-O-demethylthebaine or 6,7,8,14-tetradehydro-4,

5-alpha-epoxy-6-methoxy-17-methylmorphinan-3-ol);

Morphine;

Oxycodone;

Oxymorphone;

Thebaine.

Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this subdivision, but not including the isoquinoline alkaloids of opium.

Opium poppy and poppy straw.

Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt or isomer thereof.

Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid or powder form, which contains the phenanthrene alkaloids of the opium poppy.

2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

Alfentanil;

Alphaprodine;

Anileridine;

Bezitramide;

Bulk dextropropoxyphene (nondosage forms);

Carfentanil;

Dihydrocodeine;

Diphenoxylate;

Fentanyl;

Isomethadone;

Levo-alphacetylmethadol (levo-alpha-acetylmethadol) (levomethadyl acetate) (LAAM);

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylicacid;

Pethidine (other name: meperidine);

Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpiperidine;

Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate;

Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan;

Racemorphan;

Remifentanil;

Sufentanil;

Tapentadol.

3. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Amphetamine, its salts, optical isomers, and salts of its optical isomers;

Phenmetrazine and its salts;

Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

Methylphenidate;

Lisdexamfetamine, its salts, isomers, and salts of its isomers.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Amobarbital;

Glutethimide;

Secobarbital;

Pentobarbital;

Phencyclidine.

5. The following hallucinogenic substance:

Nabilone.

6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances which are:

a. Immediate precursors to amphetamine and methamphetamine:

Phenylacetone.

b. Immediate precursor to phencyclidine:

1-phenylcyclohexylamine;

1-piperidinocyclohexanecarbonitrile (other name: PCC).

c. Immediate precursor to fentanyl:

4-anilino-N-phenethyl-4-piperidine (ANPP).

1972, c. 798, § 54-524.84:6; 1976, c. 614; 1977, c. 302; 1978, c. 833; 1979, c. 387; 1981, c. 30; 1984, c. 192; 1986, c. 463; 1988, cc. 283, 765; 1992, c. 737; 1994, c. 763; 1998, c. 105; 2000, c. 135; 2005, c. 119; 2008, c. 74; 2010, c. 423; 2011, c. 700.

§ 54.1-3449. Placement of substance in Schedule III

The Board shall place a substance in Schedule III if it finds that:

1. The substance has a potential for abuse less than the substances listed in Schedules I and II;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

1972, c. 798, § 54-524.84:7; 1988, c. 765.

§ 54.1-3450. Schedule III

The controlled substances listed in this section are included in Schedule III:

1. Unless specifically exempted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

Any compound, mixture or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and one or more other active medicinal ingredients which are not listed in Schedules II through V;

Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and approved by the Food and Drug Administration for marketing only as a suppository;

Chlorhexadol;

Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355);

Embutramide;

Ketamine, its salts, isomers, and salts of isomers (some other names: [+-] -2-[2-chlorophenyl]-2-[methylamino]-cyclohexanone);

Lysergic acid;

Lysergic acid amide;

Methyprylon;

Perampanel [2-(2-oxo-1-phenyl-5-pyridin-2-yl-1, 2-dihydropyridin-3-yl) benxonitrile], including its salts, isomers, and salts of isomers;

Sulfondiethylmethane;

Sulfonethylmethane;

Sulfonmethane; and

Tiletamine-zolazepam combination product or any salt thereof.

2. Nalorphine.

3. Unless specifically excepted or unless listed in another schedule:

a. Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts thereof:

Buprenorphine.

b. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;

Chlorphentermine;

Clortermine;

Phendimetrazine.

5. The Board may except by regulation any compound, mixture, or preparation containing any stimulation or depressant substance listed in subsection A from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

Anabolic steroids, including, but not limited to:

3beta, 17-dihydroxy-5a-androstane;

3alpha, 17beta-dihydroxy-5a-androstane;

5alpha-androstan-3, 17-dione;

1-androstenediol (3beta, 17beta-dihydroxy-5alpha-androst-1-ene);

1-androstenediol (3alpha, 17beta-dihydroxy-5alpha-androst-1-ene);

4-androstenediol (3beta, 17beta-dihydroxy-androst-4-ene);

5-androstenediol (3beta, 17beta-dihydroxy-androst-5-ene);

1-androstenedione ([5alpha]-androst-1-en-3, 17-dione);

4-androstenedione (androst-4-en-3, 17-dione);

5-androstenedione (androst-5-en-3, 17-dione);

Bolasterone (7alpha, 17alpha-dimenthyl-17beta-hydroxyandrost-4-en-3-one);

Boldenone (Dehydrotestosterone)(17beta-hydroxyandrost-1, 4, -diene-3-one);

Boldione (androsta-1, 4-diene-3, 17-dione);

Calusterone (7beta, 17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

Clostebol (4-Chlorotestosterone)(Chlorotestosterone)(4-chloro-17beta-hydr oxyandrost-4-en-3-one);

Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methyl-androst-1, 4-dien-3-one) ;

Delta1-dihydrotestosterone (1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);

Desoxymethyltestosterone (madol) (17alpha-methyl-5alpha-androst-2-en-17beta-ol);

Dromostanolone (Drostanolone) (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3- one);

Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);

Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3- one);

Formyldienolone (Formebolone) (2-formyl-17alpha-methyl-11alpha, 17beta-dihydroxya ndrost-1, 4-dien- 3-one);

Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2, 3-c]-furazan);

13-beta-ethyl-17alpha-hydroxygon-4-en-3-one;

4-hydroxytestosterone (4, 17beta-dihydroxy-androst-4-en-3-one);

4-hydroxy-19-nortestosterone (4, 17beta-dihydroxy-estr-4-en-3-one);

Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);

Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);

Methandriol (methylandrostenediol) (17alpha-methyl-3beta, 17beta-dihydroxyandrost-5-ene);

Methandrostenolone (Methandienone) (Dehydromethyltestosterone) (17alpha-methyl-17beta-hydroxyandrost-1, 4-dien-3-one);

Methasterone (2alpha, 17alpha-dimethyl-5alpha-androstan-17beta-ol-3-one);

Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);

17alpha-methyl-3beta, 17beta-dihydroxy-5a-androstane;

17alpha-methyl-3alpha, 17beta-dihydroxy-5a-androstane;

17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene);

17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);

Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4, 9(10)-dien-3-one);

Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4, 9-11-trien-3-one);

17-Methyltestosterone (Methyltestosterone)(17alpha-methyl-17beta-hydroxyandrost-4-en- 3-one);

Mibolerone (7alpha, 17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);

17alpha-methyl-delta1-dihydrotestosterone (17beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one)(17-al pha-methyl-1-testosterone);

Nandrolone (19-Nortestosterone)(17beta-hydroxyestr-4-en-3-one);

19-nor-4, 9(10)-androstadienedione(estra-4, 9(10)-diene-3, 17-dione);

19-nor-4-androstenediol (3beta, 17beta-dihydroxyestr-4-ene);

19-nor-4-androstenediol (3alpha, 17beta-dihydroxyestr-4-ene);

19-nor-5-androstenediol (3beta, 17beta-dihydroxyestr-5-ene);

19-nor-5-androstenediol (3alpha, 17beta-dihydroxyestr-5-ene);

19-nor-4-androstenedione (estr-4-en-3, 17-dione);

19-nor-5-androstenedione (estr-5-en-3, 17-dione);

Norbolethone (13beta, 17alpha-diethyl-17beta-hydroxygon-4-en-3-one);

Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);

Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);

Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);

Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);

Oxymesterone (Oxymestrone) (17alpha-methyl-4, 17beta-dihydroxyandrost-4-en-3-one);

Oxymetholone (Anasterone) (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]-androsta n-3-one);

Prostanozol (17beta-hydroxy-5alpha-androstano[3, 2-c]pyrazole);

Stanolone (4-Dihydrotestosterone) (Dihydrotestosterone) (17beta-hydroxy-androstan-3-one);

Stanozolol (Androstanazole) (17alpha-methyl-17beta-hydroxy-[5alpha]-androst-2-eno[3, 2-c]-pyrazole);

Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

Testolactone (1-Dehydrotestololactone) (13-hydroxy-3-oxo-13, 17-secoandrosta-1 , 4-dien-17-oic acid lactone);

Testosterone (17beta-hydroxandrost-4-en-3-one);

Tetrahydrogestrinone (13beta, 17alpha-diethyl-17beta-hydroxygon-4, 9, 11-trien-3-one);

Trenbolone (Trienbolone) (Trienolone) (17beta-hydroxyestr-4, 9, 11-trien-3-one); and

Any salt, ester, or ether of a drug or substance described or listed in this paragraph. However, such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes any such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

7. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

1972, c. 798, § 54-524.84:8; 1976, c. 614; 1977, c. 302; 1979, c. 387; 1982, c. 505; 1988, cc. 283, 765; 1992, c. 737; 2000, cc. 135, 348; 2003, c. 640; 2005, c. 119; 2006, c. 346; 2007, c. 14; 2010, c. 423; 2013, c. 233; 2014, c. 74; 2015, c. 303.

§ 54.1-3451. Placement of substance in Schedule IV

The Board shall place a substance in Schedule IV if it finds that:

1. The substance has a low potential for abuse relative to substances in Schedule III;

2. The substance has currently accepted medical use in treatment in the United States; and

3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

1972, c. 798, § 54-524.84:9; 1988, c. 765.

§ 54.1-3452. Schedule IV

The controlled substances listed in this section are included in Schedule IV unless specifically excepted or listed in another schedule:

1. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Alfaxalone (5[alpha]-pregnan-3[alpha]-ol-11, 20-dione), previously spelled "alphaxalone, " including its salts, isomers, and salts of isomers;

Alprazolam;

Barbital;

Bromazepam;

Camazepam;

Carisoprodol;

Chloral betaine;

Chloral hydrate;

Chlordiazepoxide;

Clobazam;

Clonazepam;

Clorazepate;

Clotiazepam;

Cloxazolam;

Delorazepam;

Diazepam;

Dichloralphenazone;

Estazolam;

Ethchlorvynol;

Ethinamate;

Ethyl loflazepate;

Fludiazepam;

Flunitrazepam;

Flurazepam;

Fospropofol;

Halazepam;

Haloxazolam;

Ketazolam;

Loprazolam;

Lorazepam;

Lormetazepam;

Mebutamate;

Medazepam;

Methohexital;

Meprobamate;

Methylphenobarbital;

Midazolam;

Nimetazepam;

Nitrazepam;

Nordiazepam;

Oxazepam;

Oxazolam;

Paraldehyde;

Petrichloral;

Phenobarbital;

Pinazepam;

Prazepam;

Quazepam;

Suvorexant ([(7R)-4-(5-chloro-1, 3-benzoxazol-2-yl)-7-methyl-1, 4-diazepan-1 -yl][5-methyl-2-(2H-1, 2, 3-triazol-2-yl) phenyl]methanone), including its salts, isomers, and salts of isomers;

Temazepam;

Tetrazepam;

Triazolam;

Zaleplon;

Zolpidem;

Zopiclone.

2. Any compound, mixture or preparation which contains any quantity of the following substances including any salts or isomers thereof:

Fenfluramine;

Lorcaserin.

3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Cathine (+)-norpseudoephedrine;

Diethylpropion;

Fencamfamin;

Fenproprex;

Mazindol;

Mefenorex;

Modafinil;

Phentermine;

Pemoline (including organometallic complexes and chelates thereof);

Pipradrol;

Sibutramine;

SPA (-)-1-dimethylamino-1, 2-diphenylethane.

4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxy butane);

Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

2-[(dimethylamino) methyl]-1-(3-methoxyphenyl) cyclohexanol, its salts, optical and geometric isomers, and salts of such isomers, including tramadol.

5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts:

Butorphanol (including its optical isomers);

Eluxadoline (including its optical isomers and its salts, isomers, and salts of isomers);

Pentazocine.

6. The Board may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

1972, c. 798, § 54-524.84:10; 1976, c. 614; 1977, c. 302; 1978, c. 705; 1979, c. 387; 1982, c. 505; 1986, c. 463; 1988, cc. 283, 765; 1992, c. 737; 1994, c. 763; 1998, c. 105; 1999, c. 605; 2000, c. 135; 2003, c. 640; 2006, c. 346; 2010, c. 423; 2012, c. 540; 2014, c. 74; 2015, c. 303; 2016, c. 499.

§ 54.1-3453. Placement of substance in Schedule V

The Board shall place a substance in Schedule V if it finds that:

1. The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

2. The substance has currently accepted medical use in treatment in the United States; and

3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

1972, c. 798, § 54-524.84:11; 1988, c. 765.

§ 54.1-3454. Schedule V

The controlled substances listed in this section are included in Schedule V:

1. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

The Board may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter and such substances so excepted may be dispensed pursuant to § 54.1-3416.

2. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

Pyrovalerone.

3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]-2779;

Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

1972, c. 798, § 54-524.84:12; 1976, c. 614; 1977, c. 302; 1979, c. 387; 1984, c. 186; 1986, c. 463; 1988, c. 765; 1992, c. 737; 1994, c. 763; 2003, c. 640; 2006, c. 346; 2010, c. 423; 2012, c. 541.

§ 54.1-3455. Schedule VI

The following classes of drugs and devices shall be controlled by Schedule VI:

1. Any compound, mixture, or preparation containing any stimulant or depressant drug exempted from Schedules III, IV or V and designated by the Board as subject to this section.

2. Every drug, not included in Schedules I, II, III, IV or V, or device, which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts qualified by scientific training and experience to evaluate its safety and efficacy as safe for use except by or under the supervision of a practitioner licensed to prescribe or administer such drug or device.

3. Any drug, not included in Schedules I, II, III, IV or V, required by federal law to bear on its label prior to dispensing, at a minimum, the symbol "Rx only," or which bears the legend "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: Federal Law Restricts This Drug To Use By Or On The Order Of A Veterinarian" or any device which bears the legend "Caution: Federal Law Restricts This Device To Sales By Or On The Order Of A _____." (The blank should be completed with the word "Physician," "Dentist," "Veterinarian," or with the professional designation of any other practitioner licensed to use or order such device.)

1972, c. 798, § 54-524.84:13; 1976, c. 614; 1977, c. 302; 1988, c. 765; 1999, c. 605.

§ 54.1-3456. Controlled substance analog

A controlled substance analog shall, to the extent intended for human consumption, be treated, for the purposes of any state law, as a controlled substance in Schedule I or II. A controlled substance analog shall be considered to be listed on the same schedule as the drug or class of drugs which it imitates.

1987, c. 447, § 54-524.84:14; 1988, c. 765; 2014, cc. 674, 719.

§ 54.1-3456.1. Drugs of concern

A. The Board may promulgate regulations designating specific drugs and substances, including any controlled substance or other drug or substance where there has been or there is the actual or relative potential for abuse, as drugs of concern. Drugs or substances designated as drugs of concern

shall be reported to the Department of Health Professions and shall be subject to reporting requirements for the Prescription Monitoring Program established pursuant to Chapter 25.2 (§ 54.1-2519 et seq.).

B. Drugs and substances designated as drugs of concern shall include any material, compound, mixture, or preparation that contains any quantity of the substance Tramadol, including its salts. Drugs and substances designated as drugs of concern shall not include any non-narcotic drug that may be lawfully sold over the counter or behind the counter without a prescription.

2014, c. 664.

Article 6 - MISBRANDED AND ADULTERATED DRUGS AND COSMETICS

§ 54.1-3457. Prohibited acts

The following acts shall be prohibited:

1. The manufacture, sale, delivery, holding, or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic.

3. The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 54.1-3421.

5. The dissemination of any false advertisement.

6. The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record.

7. The giving of a false guaranty or undertaking.

8. The removal or disposal of a detained article in violation of § 54.1-3459.

9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

10. The forging, counterfeiting, simulating, or falsely representing, or without proper authority using of any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act.

11. The using by any person to his own advantage, or revealing, other than to the Board or its authorized representative or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.

12. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under § 54.1-3421, or that such drug complies with the provisions of such section.

13. In the case of a drug distributed or offered for sale in this Commonwealth, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. This subdivision shall not be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

14. Placing or causing to be placed upon any drug or device or container, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by this section or making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

15. The doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

16. Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the permission of the person ordering or prescribing, except as provided in § 54.1-3408.03 relating to dispensing of therapeutically equivalent drugs.

17. Dispensing or causing to be dispensed a biosimilar in place of a prescribed biological product or brand of biological product, except as provided in § 54.1-3408.04 related to dispensing of interchangeable biosimilars.

1970, c. 650, § 54-524.85; 1988, c. 765; 2003, c. 639; 2013, cc. 412, 544.

§ 54.1-3458. Violations

A. Any person who violates any of the provisions of § 54.1-3457 shall be guilty of a Class 2 misdemeanor.

B. No person shall be subject to the penalties of this section for having violated subdivisions 1 and 3 of § 54.1-3457 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this Commonwealth from whom he received in good

faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter.

C. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section for the dissemination of such false advertisement, unless he has refused, on the request of the Board, to furnish the Board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this Commonwealth who caused him to disseminate such advertisement.

1970, c. 650, § 54-524.87; 1988, c. 765.

§ 54.1-3459. Tagging of adulterated or misbranded drugs, devices, or cosmetics; condemnation; destruction; expenses

A. Whenever a duly authorized agent of the Board finds, or has probable cause to believe, that any drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter or is in violation of § 54.1-3457, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded or in violation of § 54.1-3457 and has been detained. The tag shall also warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It shall be unlawful for any person to remove or dispose of such detained article by sale or otherwise without permission.

B. When an article is adulterated or misbranded or is in violation of § 54.1-3421, the Board may petition the circuit court in whose jurisdiction the article is detained for condemnation of such article. When an authorized agent finds that an article which has been detained is not adulterated or misbranded, or in violation of § 54.1-3421, he shall remove the tag or other marking.

C. If the court finds that a detained article is adulterated or misbranded, or in violation of § 54.1-3421, such article shall, after entry of the decree, be destroyed at the expense of the claimant, under the supervision of an authorized agent, and all court costs and fees, and storage and other proper expenses, shall be levied against the claimant or his agent. When the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court shall order the article to be properly labeled or processed. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the Board that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

1970, c. 650, § 54-524.88; 1988, c. 765.

§ 54.1-3460. Poisonous or deleterious substance, or color additive

Any added poisonous or deleterious substance, or any color additive, shall with respect to any particular use or intended use be deemed unsafe with respect to any drug, device, or cosmetic, unless there is a regulation allowing limited use of a quantity of such substance, and the use or intended

use of such substance conforms to the terms prescribed by regulation. While such regulations relating to such substance are in effect, a drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations, be considered adulterated.

1970, c. 650, § 54-524.91; 1988, c. 765.

§ 54.1-3461. Adulterated drug or device

A. A drug or device shall be deemed to be adulterated:

1. If it consists in whole or in part of any filth, putrid or decomposed substance;

2. If it has been produced, prepared, packed, or held under insanitary conditions whereby it has been contaminated with filth, or whereby it has been rendered injurious to health;

3. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter;

4. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

5. If it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or § 54.1-3460; or

6. It is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act or § 54.1-3460.

B. A drug or device shall be deemed to be adulterated if it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination of strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in such compendium, if the difference in strength, quality, or purity from such standard is plainly stated on its label.

Whenever a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia National Formulary unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia National Formulary.

C. A drug or device shall be deemed to be adulterated if it is not subject to the provisions of subsection B of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

D. A drug or device shall be deemed to be adulterated if it is a drug and any substance has been (i) mixed or packed with it so as to reduce its quality or strength or (ii) substituted wholly or in part for it.

Code 1950, § 54-461; 1970, c. 650, § 54-524.92; 1988, c. 765.

§ 54.1-3462. Misbranded drug or device

A drug or device shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If its package does not bear a label containing the name and place of business of the manufacturer, packer, or distributor. However, all prescription drugs intended for human use and devices shall bear a label containing the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions for small packages shall be allowed in accordance with regulations of the Board.

3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. If it is for use by man and contains any quantity of the narcotic or hypnotic substances alpha-eucaine, barbituric acid, beta-eucaine, bromal, carbromal, chloral, coca, cocaine, codeine, morphine, opium, paraldehyde, or sulfonmethane, or any chemical derivative of such substances, which derivative, after investigation has been found to be and designated as, habit forming, by regulations issued by the Board under this chapter, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May Be Habit Forming."

5. If it is a drug, unless its label bears, to the exclusion of any other nonproprietary name, except the applicable systematic chemical name or the chemical formula, the established name of the drug, and in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation

of any such substances. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs. Any prescription drug shall have the established name of the drug or ingredient printed on its label prominently and in type at least half as large as that used for any proprietary name or designation for such drug or ingredient. Exemptions may be allowed under regulations of the Board.

As used in this subdivision, the term "established name," with respect to a drug or ingredient, means the applicable official name designated pursuant to § 508 of the federal act, or if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title in such compendium or if neither exists, then the common or usual name, if any, of such drug or of such ingredient. Whenever, an article is recognized in the United States Pharmacopoeia National Formulary and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia National Formulary shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

6. Unless its labeling bears adequate directions for use and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. The Board shall promulgate regulations exempting such drug or device from such requirements when these requirements are not necessary to protect the public health and the articles are also exempted under regulations issued under § 502(f) of the federal act.

7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed. The method of packing may be modified with the consent of the Board, or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia National Formulary. However, in the event of inconsistency between the requirements of this subdivision and those of subdivision 5 as to the name by which the drug or its ingredients shall be designated, the requirements of subdivision 5 shall prevail.

8. If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling or advertising.

9. If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless it is from a batch for which a certificate or release has been issued pursuant to § 506 of the federal act, and such certificate or release is in effect with respect to such drug.

10. If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative, unless it is from a batch, for which a certificate or release has been issued pursuant to § 507 of the federal act, and such certificate or release is in effect for such drug. This subdivision shall not apply to any drug or class of drugs exempted by regulations promulgated under § 507(c) or (d) of the federal law.

For the purpose of this subdivision the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution, including, the chemically synthesized equivalent of any such substance.

11. If it is a color additive, the intended use of which in or on drugs is for coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of the federal act.

12. In the case of any prescription drug distributed or offered for sale in this Commonwealth, unless the manufacturer, packer, or distributor includes in all advertisements and other descriptive printed matter a true statement of (i) the established name, as defined in this section, printed prominently and in type at least half as large as that used for any trade or brand name, (ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under this section, and (iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as are required in regulations issued under the federal act.

13. If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter if such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the Board.

Code 1950, § 54-463; 1958, c. 551; 1970, c. 650, § 54-524.93; 1976, c. 644; 1988, c. 765.

§ 54.1-3463. Exemption of drugs dispensed by filling or refilling prescription

A. Any drug dispensed by filling or refilling a written or oral prescription of a prescriber shall be exempt from the requirements of § 54.1-3462 except subdivisions 1, 9, and 10, and the packaging requirements of subdivision 7, if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber

and the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription.

B. This section shall not be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

1970, c. 650, § 54-524.94; 1988, c. 765; 1996, c. 408.

§ 54.1-3464. Adulterated cosmetics

A cosmetic shall be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement, or under such conditions of use as are customary or usual. This provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution -- This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this subdivision and subdivision 5, the term "hair dye" shall not include eyelash or eyebrow dyes;

2. If it consists in whole or in part of any filthy, putrid, or decomposed substance;

3. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

4. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

5. If it is not a hair dye, and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act or § 54.1-3460.

Code 1950, § 54-462; 1970, c. 650, § 54-524.96; 1988, c. 765.

§ 54.1-3465. Misbranded cosmetics

A cosmetic shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular;

2. If in package form unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. However, reasonable variations shall be permitted, and exemptions for small packages shall be established by the Board;

3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as

compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

4. If its container is so made, formed or filled as to be misleading;

5. If it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to such color additive under the provisions of the federal act. This subdivision shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes.

A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter while it is in transit in commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all applicable provisions of this chapter.

Code 1950, § 54-466; 1970, c. 650, § 54-524.97; 1988, c. 765.

Article 7 - CONTROLLED PARAPHERNALIA

§ 54.1-3466. Possession or distribution of controlled paraphernalia; meaning of controlled paraphernalia; evidence; exceptions

A. For purposes of this chapter, "controlled paraphernalia" means (i) a hypodermic syringe, needle, or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances that reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled drug or (ii) gelatin capsules, glassine envelopes, or any other container suitable for the packaging of individual quantities of controlled drugs in sufficient quantity to and under circumstances that reasonably indicate an intention to use any such item for the illegal manufacture, distribution, or dispensing of any such controlled drug. Evidence of such circumstances shall include, but not be limited to, close proximity of any such controlled paraphernalia to any adulterants or equipment commonly used in the illegal manufacture and distribution of controlled drugs including, but not limited to, scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride, mannitol, lactose, quinine, or any controlled drug, or any machine, equipment, instrument, implement, device, or combination thereof that is adapted for the production of controlled drugs under circumstances that reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any controlled drug in violation of the provisions of this chapter.

B. Except as authorized in this chapter, it is unlawful for any person to possess controlled paraphernalia.

C. Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.

D. A violation of this section is a Class 1 misdemeanor.

E. The provisions of this section shall not apply to persons who have acquired possession and control of controlled paraphernalia in accordance with the provisions of this article or to any person who owns or is engaged in breeding or raising livestock, poultry, or other animals to which hypodermic injections are customarily given in the interest of health, safety, or good husbandry; or to hospitals, physicians, pharmacists, dentists, podiatrists, veterinarians, funeral directors and embalmers, persons to whom a permit has been issued, manufacturers, wholesalers, or their authorized agents or employees when in the usual course of their business, if the controlled paraphernalia lawfully obtained continue to be used for the legitimate purposes for which they were obtained.

1971, Ex. Sess., cc. 210, 245; 1976, c. 614; 1988, c. 765; 2016, c. 229.

§ 54.1-3467. Distribution of hypodermic needles or syringes, gelatin capsules, quinine or any of its salts

Distribution by any method, of any hypodermic needles or syringes, gelatin capsules, quinine or any of its salts, in excess of one-fourth ounce shall be restricted to licensed pharmacists or to others who have received a license or a permit from the Board.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§ 54.1-3468. Conditions to dispensing device, item, or substance; records

In dispensing any device, item or substance, the pharmacist or other licensed or permitted person referred to in § 54.1-3467 shall:

1. Require the person requesting such device, item or substance to furnish suitable identification, including proof of age when appropriate;

2. Require the person requesting such item, device or substance to furnish written legitimate purposes for which such item, device or substance is being purchased, except in cases of telephone orders for such item, device or substance from customers of known good standing;

3. At the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the device, item or substance, the price at which it was sold, the name and address of the person to whom the device, item or substance was dispensed, the reason for its purchase and enter his initials thereon.

No such devices, substances or items shall be sold or distributed to persons under the age of sixteen years except by a physician for legitimate purposes or upon his prescription. Records shall be maintained pursuant to this chapter and the Board's regulations and shall be made available for inspection to any law-enforcement officer or agent of the Board. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§ 54.1-3469. Storage, usage, and disposition of controlled paraphernalia

Each person, association or corporation which has lawfully obtained possession of any of the controlled paraphernalia mentioned in § 54.1-3467 shall exercise reasonable care in the storage, usage and disposition of such devices or substances to ensure that they are not diverted for reuse for any purposes other than those for which they were lawfully obtained. Any person who permits or causes, directly or indirectly, such controlled paraphernalia to be used for any other purpose than that for which it was lawfully obtained shall be guilty of a Class 1 misdemeanor.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§ 54.1-3470. Obtaining controlled paraphernalia by fraud, etc

A. No person shall obtain or attempt to obtain any item, device or substance referred to in § 54.1-3467 by fraud, deceit, misrepresentation, or subterfuge or by giving a false name or a false address.

B. No person shall furnish false or fraudulent information in or omit any information from, or willfully make a false statement in obtaining or attempting to obtain any of the instruments or substances referred to in § 54.1-3467.

C. No person shall, for the purpose of obtaining any such instrument or substance, falsely claim to be a manufacturer, wholesaler, pharmacist, practitioner of the healing arts, funeral director, embalmer or veterinarian.

Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§ 54.1-3471. Issuance of permits to certain persons other than registered pharmacists

The Board shall, upon written application, on a form furnished by the Board, issue a permit to any person other than a licensed pharmacist who in the usual course of business sells any item referred to in § 54.1-3467 as a wholesale distributor or distributes at retail to any persons who own or breed or raise livestock, poultry, or other animals to which such items, devices or substances are customarily given to or used upon in the interest of health, safety, or good husbandry. This permit shall not authorize the sale or distribution of these items, devices or substances for human use and the permitted person shall exercise reasonable diligence to assure that the items distributed are not for the purpose of human consumption.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

§ 54.1-3472. Article inapplicable to certain persons

The provisions of this article shall not apply to legitimate distribution by or possession of controlled paraphernalia by physicians, dentists, podiatrists, veterinarians, funeral directors and embalmers.

1971, Ex. Sess., cc. 210, 245; 1988, c. 765.

Chapter 34.1 - PHYSICAL THERAPY

§ 54.1-3473. Definitions

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

"Board" means the Board of Physical Therapy.

"Physical therapist" means any person licensed by the Board to engage in the practice of physical therapy.

"Physical therapist assistant" means any person licensed by the Board to assist a physical therapist in the practice of physical therapy.

"Practice of physical therapy" means that branch of the healing arts that is concerned with, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders. The practice of physical therapy also includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures within the scope of practice of the physical therapist. However, the practice of physical therapy does not include the medical diagnosis of disease or injury, the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

2000, c. 688; 2001, c. 858.

§ 54.1-3474. Unlawful to practice without license; continuing competency requirements

A. It shall be unlawful for any person to practice physical therapy or as a physical therapist assistant in the Commonwealth without a valid unrevoked license issued by the Board.

B. The Board shall promulgate regulations establishing requirements to ensure continuing competency of physical therapists and physical therapist assistants, which may include continuing education, testing, or such other requirements as the Board may determine to be necessary.

C. In promulgating continuing competency requirements, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

D. The Board may approve persons who provide or accredit programs to ensure continuing competency.

2000, c. 688; 2001, c. 858.

§ 54.1-3475. Board of Physical Therapy; appointment; qualifications; officers; nominations

A. The Board of Physical Therapy shall regulate the practice of physical therapy and carry out the provisions of this chapter regarding the qualifications, examination, licensure and regulation of

physical therapists and physical therapist assistants and shall have the general powers and duties of a health regulatory board pursuant to § 54.1-2400.

B. The Board shall be appointed by the Governor and shall be composed of seven members, five of whom shall be physical therapists who have been in active practice for at least seven years prior to appointment with at least three of such years in Virginia; one shall be a licensed physical therapist assistant; and one shall be a citizen member. Members shall be appointed for terms of four years and shall serve until their successors are appointed. The initial appointments shall provide for staggered terms with two members being appointed for a one-year term, two members being appointed for a two-year term, two members being appointed for a three-year term, and one member being appointed for a four-year term. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Board for more than two successive full terms.

C. The Board shall annually elect a president and a vice-president.

D. Nominations for the professional members of the Board may be chosen by the Governor from a list of at least three names for each vacancy submitted by the Virginia Physical Therapy Association, Inc. The Governor may notify the Association of any professional vacancy other than by expiration of a term and nominations may be submitted by the Association. The Governor shall not be bound to make any appointments from among such nominees.

2000, c. 688.

§ 54.1-3476. Exemptions

This chapter shall not apply to the performance of the duties of any commissioned or contract physical therapist or physical therapist assistant while practicing in the United States Armed Services, United States Public Health Service or United States Department of Veterans Affairs as based on requirements under federal regulations for state licensure of health care providers, or to a physical therapist or a physical therapist assistant licensed or certified and in good standing with the applicable regulatory agency in the state, District of Columbia, or Canada where the practitioner resides when the practitioner is in Virginia temporarily to practice for no longer than sixty days (i) in a summer camp or in conjunction with patients who are participating in recreational activities, (ii) in continuing education programs, or (iii) by rendering at any site any health care services within the limits of his license or certificate, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106.

2000, c. 688.

§ 54.1-3477. Requirements for licensure as a physical therapist

An applicant for licensure as a physical therapist shall submit evidence, verified by affidavit and satisfactory to the Board, that the applicant:

1. Is eighteen years of age or more;

2. Is a graduate of a school of physical therapy approved by the American Physical Therapy Association or is a graduate of a school outside of the United States or Canada which is acceptable to the Board; and

3. Has satisfactorily passed an examination approved by the Board.

2000, c. 688.

§ 54.1-3478. Requirements for licensure as a physical therapist assistant

An applicant for licensure as a physical therapist assistant shall submit evidence, verified by affidavit and satisfactory to the Board, that the applicant:

1. Is eighteen years of age or more;

2. Is a graduate of a two-year college-level education program for physical therapist assistants acceptable to the Board; and

3. Has satisfactorily passed an examination approved by the Board.

2000, c. 688.

§ 54.1-3479. Licensure by examination or endorsement; traineeships

A. The Board shall provide for the examinations to be taken by applicants for licensure as physical therapists and physical therapist assistants. The Board shall, on the basis of such examinations, issue or deny licenses to applicants to practice physical therapy or perform the duties of a physical therapist assistant. Any applicant who feels aggrieved at the result of his examination may appeal to the Board.

B. The Board, in its discretion, may issue licenses to applicants upon endorsement by boards of other appropriate authorities of other states or territories or the District of Columbia with which reciprocal relations have not been established if the credentials of such applicants are satisfactory and the examinations and passing grades required by such other boards are determined to be equivalent to those required by the Virginia Board.

C. The Board, in its discretion, may provide for the limited practice of physical therapy by a graduate physical therapist or physical therapist assistant enrolled in a traineeship program as defined by the Board under the direct supervision of a licensed physical therapist.

D. In granting licenses to out-of-state applicants, the Board may require physical therapists or physical therapist assistants to meet the professional activity requirements or serve traineeships according to regulations promulgated by the Board.

2000, c. 688.

§ 54.1-3480. Refusal, revocation or suspension

A. The Board may refuse to admit a candidate to any examination, may refuse to issue a license to any applicant, and may suspend for a stated period of time or indefinitely or revoke any license or

censure or reprimand any person or place him on probation for such time as it may designate for any of the following causes:

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of physical therapy;

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

3. Unprofessional conduct as defined in this chapter;

4. Intentional or negligent conduct that causes or is likely to cause injury to a patient or patients;

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

6. Restriction of a license to practice physical therapy in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction;

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

8. Adjudged legally incompetent or incapacitated in any state if such adjudication is in effect and the person has not been declared restored to competence or capacity; or

9. Conviction of an offense in another state, territory or foreign jurisdiction, which if committed in Virginia would be a felony. Such conviction shall be treated as a felony conviction under this section regardless of its designation in the other state, territory or foreign jurisdiction.

B. The Board shall refuse to admit a candidate to any examination and shall refuse to issue a license to any applicant if the candidate or applicant has had his certificate or license to practice physical therapy revoked or suspended, and has not had his certificate or license to so practice reinstated, in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

2000, c. 688; 2001, c. 858; 2003, cc. 753, 762; 2004, c. 64.

§ 54.1-3480.1. Continuing education

As a prerequisite to renewal of a license or reinstatement of a license, each physical therapist shall be required to take biennial courses relating to physical therapy as approved by the Board. The Board shall prescribe criteria for approval of courses of study and credit hour requirements. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed physical therapist at the time he applies to the Board for the renewal or reinstatement of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.

2001, c. 315.

§ 54.1-3481. Unlawful designation as physical therapist or physical therapist assistant; penalty

A. It shall be unlawful for any person who is not licensed under this chapter, or whose license has been suspended or revoked or who licensure has lapsed and has not been renewed, to use in conjunction with his name the letters or words "R.P.T.," "Registered Physical Therapist," "L.P.T.," "Licensed Physical Therapist," "P.T.," "Physical Therapist," "Physio-therapist," "P.T.T.," "Physical Therapy Technician," "P.T.A.," "Physical Therapist Assistant," "Licensed Physical Therapist Assistant," or to otherwise by letters, words, representations or insignias assert or imply that he is a licensed physical therapist. The title to designate a licensed physical therapist shall be "P.T." The title to designate a physical therapist assistant shall show such fact plainly on its face.

B. No person shall advertise services using the words "physical therapy" or "physiotherapy" unless those services are provided by a physical therapist or physical therapist assistant licensed pursuant to this chapter.

C. A complaint or report of a possible violation of this section by any person who is licensed, certified, registered, or permitted, or who holds a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions shall be referred to the applicable board within the Department for disciplinary action.

D. Nothing in this section shall be construed to restrict or limit the legally authorized scope of practice of any profession licensed, certified, registered, permitted, or recognized under a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions prior to January 1, 2010.

2000, c. 688; 2010, cc. 70, 368.

§ 54.1-3482. Practice of physical therapy; certain experience and referrals required; physical therapist assistants

A. It shall be unlawful for a person to engage in the practice of physical therapy except as a licensed physical therapist, upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician, except as provided in this section.

B. A physical therapist who has completed a doctor of physical therapy program approved by the Commission on Accreditation of Physical Therapy Education or who has obtained a certificate of authorization pursuant to § 54.1-3482.1 may evaluate and treat a patient for no more than 30 consecutive days after an initial evaluation without a referral under the following conditions: (i) the patient is not receiving care from any licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician for the symptoms giving rise to the presentation at the time of the presentation to the physical

therapist for physical therapy services or (ii) the patient is receiving care from a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician at the time of his presentation to the physical therapist for the symptoms giving rise to the presentation for physical therapy services and (a) the patient identifies a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician from whom he is currently receiving care; (b) the patient gives written consent for the physical therapist to release all personal health information and treatment records to the identified practitioner; and (c) the physical therapist notifies the practitioner identified by the patient no later than 14 days after treatment commences and provides the practitioner with a copy of the initial evaluation along with a copy of the patient history obtained by the physical therapist. Treatment for more than 30 consecutive days after evaluation of such patient shall only be upon the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician. A physical therapist may contact the practitioner identified by the patient at the end of the 30-day period to determine if the practitioner will authorize additional physical therapy services until such time as the patient can be seen by the practitioner. A physical therapist shall not perform an initial evaluation of a patient under this subsection if the physical therapist has performed an initial evaluation of the patient under this subsection for the same condition within the immediately preceding 60 days.

C. A physical therapist who has not completed a doctor of physical therapy program approved by the Commission on Accreditation of Physical Therapy Education or who has not obtained a certificate of authorization pursuant to § 54.1-3482.1 may conduct a one-time evaluation that does not include treatment of a patient without the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician; if appropriate, the physical therapist shall immediately refer such patient to the appropriate practitioner.

D. Invasive procedures within the scope of practice of physical therapy shall at all times be performed only under the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician.

E. It shall be unlawful for any licensed physical therapist to fail to immediately refer any patient to a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, or a licensed nurse practitioner practicing in accordance with his practice agreement when such

patient's medical condition is determined, at the time of evaluation or treatment, to be beyond the physical therapist's scope of practice. Upon determining that the patient's medical condition is beyond the scope of practice of a physical therapist, a physical therapist shall immediately refer such patient to an appropriate practitioner.

F. Any person licensed as a physical therapist assistant shall perform his duties only under the direction and control of a licensed physical therapist.

G. However, a licensed physical therapist may provide, without referral or supervision, physical therapy services to (i) a student athlete participating in a school-sponsored athletic activity while such student is at such activity in a public, private, or religious elementary, middle or high school, or public or private institution of higher education when such services are rendered by a licensed physical therapist who is certified as an athletic trainer by the National Athletic Trainers' Association Board of Certification or as a sports certified specialist by the American Board of Physical Therapy Specialties; (ii) employees solely for the purpose of evaluation and consultation related to workplace ergonomics; (iii) special education students who, by virtue of their individualized education plans (IEPs), need physical therapy services to fulfill the provisions of their IEPs; (iv) the public for the purpose of wellness, fitness, and health screenings; (v) the public for the purpose of health promotion and education; and (vi) the public for the purpose of prevention of impairments, functional limitations, and disabilities.

2000, c. 688; 2001, c. 858; 2002, cc. 434, 471; 2003, c. 496; 2005, c. 928; 2007, cc. 9, 18; 2015, cc. 724, 746.

§ 54.1-3482.1. Certain certification required

A. The Board shall promulgate regulations establishing criteria for certification of physical therapists to provide certain physical therapy services pursuant to subsection B of § 54.1-3482 without referral from a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician. The regulations shall include but not be limited to provisions for (i) the promotion of patient safety; (ii) an application process for a one-time certification to perform such procedures; and (iii) minimum education, training, and experience requirements for certification to perform such procedures.

B. The minimum education, training, and experience requirements for certification shall include evidence that the applicant has successfully completed (i) a transitional program in physical therapy as recognized by the Board or (ii) at least three years of active practice with evidence of continuing education relating to carrying out direct access duties under § 54.1-3482.

2007, cc. 9, 18; 2015, cc. 724, 746.

§ 54.1-3483. Unprofessional conduct

Any physical therapist or physical therapist assistant licensed by the Board shall be considered guilty of unprofessional conduct if he:

1. Engages in the practice of physical therapy under a false or assumed name or impersonates another practitioner of a like, similar or different name;

2. Knowingly and willfully commits any act which is a felony under the laws of this Commonwealth or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude;

3. Aids or abets, has professional contact with, or lends his name to any person known to him to be practicing physical therapy illegally;

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

5. Is unable to practice with reasonable skill or safety because of illness or substance abuse;

6. Publishes in any manner an advertisement that violates Board regulations governing advertising;

7. Performs any act likely to deceive, defraud or harm the public;

8. Violates any provision of statute or regulation, state or federal, relating to controlled substances;

9. Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board; or

10. Engages in sexual contact with a patient concurrent with and by virtue of the practitioner/patient relationship or otherwise engages at any time during the course of the practitioner/patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

2000, c. 688; 2001, c. 858.

Chapter 35 - PROFESSIONAL COUNSELING

Article 1 - GENERAL PROVISIONS

§ 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 Counseling.

"Certified substance abuse counseling assistant" means a person certified by the Board to practice in accordance with the provisions of § 54.1-3507.2.

"Certified substance abuse counselor" means a person certified by the Board to practice in accordance with the provisions of § 54.1-3507.1.

"Counseling" means the application of principles, standards, and methods of the counseling profession in (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 that interfere with mental health.

"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, standards, and methods 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 the application of principles, standards, and methods of the counseling profession, including counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses that 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.

"Residency" means a post-internship supervised clinical experience registered with the Board.

"Resident" means an individual who has submitted a supervisory contract to the Board and has received Board approval to provide clinical services in professional counseling under supervision.

"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.

"Supervision" means the ongoing process, performed by a supervisor, of monitoring the performance of the person supervised and providing regular, documented individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person supervised.

1976, c. 608, §§ 54-924, 54-932; 1983, c. 115; 1986, cc. 64, 464; 1988, c. 765; 1993, c. 342; 1995, c. 820; 1997, c. 901; 2000, c. 473; 2001, c. 460; 2013, c. 264.

§ 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.

1976, c. 608, § 54-944; 1986, c. 581; 1988, c. 765; 1995, c. 820; 1997, c. 901.

§ 54.1-3502. Administration or prescription of drugs not permitted

This chapter shall not be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 29 (§ 54.1-2900 et seq.) of this title.

1976, c. 608, § 54-945; 1988, c. 765.

§ 54.1-3503. Board of Counseling

The Board of Counseling shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.

The Board shall consist of 12 members to be appointed by the Governor, subject to confirmation by the General Assembly. Ten members shall be professionals licensed in the Commonwealth, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the 10 professional members, six shall be professional counselors, three shall be licensed marriage and family therapists who have passed the examination for licensure as a marriage and family therapist, and one shall be a licensed substance abuse treatment practitioner.

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

1976, c. 608; § 54-933; 1981, c. 447; 1983, c. 150; 1986, cc. 185, 464; 1988, c. 765; 1995, c. 820; 1997, c. 901; 2000, c. 473; 2013, cc. 201, 590; 2016, c. 105.

§ 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.

1986, c. 464, § 54-933.2; 1988, c. 765; 1995, c. 820; 1997, c. 901.

§ 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. [Expired.]

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 and certification of certified substance abuse counselors and certified substance abuse counseling assistants. The requirements for membership in NAADAC: the Association for Addiction Professionals and its national examination may be considered by the Board in the promulgation of these regulations. The Board also may provide for the consideration and use of the accreditation and examination services offered by the Substance Abuse Certification Alliance of Virginia. 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. Such regulations also shall establish standards and protocols for the clinical supervision of certified substance abuse counselors and the supervision or direction of certified substance abuse counseling assistants, and reasonable access to the persons providing that supervision or direction in settings other than a licensed facility.

8. To maintain a registry of persons who meet the requirements for supervision of residents. The Board shall make the registry of approved supervisors available to persons seeking residence status.

1976, c. 608, §§ 54-929, 54-931; 1983, c. 115; 1986, cc. 64, 100, 464; 1988, c. 765; 1994, cc. 558, 778; 1995, c. 820; 1997, c. 901; 2001, c. 460; 2013, c. 264.

§ 54.1-3505.1. Continued competency requirements

The Board shall promulgate regulations establishing requirements for evidence of continued competency as a condition of renewal of a license under the provisions of this chapter. The Board may approve persons who provide or accredit continuing education programs in order to accomplish the purposes of this section. The Board shall have the authority to grant exemptions or waivers or to reduce the number of continuing education hours required in cases of certified illness or undue hardship.

2002, c. 430.

§ 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 issued by the Board.

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 Behavioral Health and Developmental Services.

1979, c. 408, § 54-935.1; 1988, c. 765; 1995, c. 820; 1997, c. 901; 2009, cc. 813, 840; 2013, c. 264.

§ 54.1-3506.1. Client notification

Any person licensed by the Board and operating in a nonhospital setting shall post a copy of his license in a conspicuous place. The posting shall also provide clients with (i) the number of the toll-free complaint line at the Department of Health Professions, (ii) the website address of the Department for the purposes of accessing the licensee's record, and (iii) notice of the client's right to report to the Department if he believes the licensee may have engaged in unethical, fraudulent, or unprofessional conduct.

2015, c. 530.

Article 1.1 - LICENSED SUBSTANCE ABUSE TREATMENT PRACTITIONERS

§ 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 any other mental health professional licensed by the Department, such number of hours being greater than the number of hours required of a certified substance abuse counseling assistant. The applicant shall also pass an examination, as required by the Board.

1997, c. 901; 2001, c. 460.

§ 54.1-3507.1. Scope of practice, supervision, and qualifications of certified substance abuse counselors

A. A certified substance abuse counselor shall be (i) qualified to perform, under appropriate supervision or direction, the substance abuse treatment functions of screening, intake, orientation, the

administration of substance abuse assessment instruments, recovery and relapse prevention planning, substance abuse treatment, case management, substance abuse or dependence crisis intervention, client education, referral activities, record keeping, and consultation with other professionals; (ii) qualified to be responsible for client care of persons with a primary diagnosis of substance abuse or dependence; and (iii) qualified to supervise, direct and instruct certified substance abuse counseling assistants. Certified substance abuse counselors shall not engage in independent or autonomous practice.

B. Such counselor shall also be clinically supervised or directed by a licensed substance abuse treatment practitioner, or any other mental health professional licensed by the Department, or, in an exempt setting as described in § 54.1-3501, another person with substantially equivalent education, training, and experience, or such counselor shall be in compliance with the supervision requirements of a licensed facility.

C. Pursuant to regulations adopted by the Board, an applicant for certification as a substance abuse counselor shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of didactic substance abuse education courses in a program or programs recognized or approved by the Board and received a bachelor's degree from a college or university accredited by an accrediting agency recognized by the Board; and (ii) accumulated a specified number of hours of experience involving the practice of substance abuse treatment while supervised by a licensed substance abuse treatment practitioner, or by any other mental health professional licensed by the Department, or by a certified substance abuse counselor who shall submit evidence satisfactory to the Board of clinical supervision qualifications pursuant to regulations adopted by the Board, such number of hours being greater than the number of hours required of a certified substance abuse counseling assistant. The applicant shall also pass an examination as required by the Board.

2001, c. 460.

§ 54.1-3507.2. Scope of practice, supervision, and qualifications of certified substance abuse counseling assistants

A. A certified substance abuse counseling assistant shall be qualified to perform, under appropriate supervision or direction, the substance abuse treatment functions of orientation, implementation of substance abuse treatment plans, case management, substance abuse or dependence crisis intervention, record keeping, and consultation with other professionals. Certified substance abuse counseling assistants may participate in recovery group discussions, but shall not engage in counseling with either individuals or groups or engage in independent or autonomous practice.

B. Such certified substance abuse counseling assistant shall be supervised or directed either by a licensed substance abuse treatment practitioner, or by any other mental health professional licensed by the Department, or by a certified substance abuse counselor, or, in an exempt setting as described in § 54.1-3501, another person with substantially equivalent education, training, and

experience, or such counseling assistant shall be in compliance with the supervision requirements of a licensed facility.

C. Pursuant to regulations adopted by the Board, an applicant for certification as a certified substance abuse counseling assistant shall submit evidence satisfactory to the Board that the applicant has (i) received a high school diploma or its equivalent, (ii) completed a specified number of hours of didactic substance abuse education in a program or programs recognized or approved by the Board, and (iii) accumulated a specified number of hours of experience and completed a practicum or an internship involving substance abuse treatment, supervised either by a licensed substance abuse treatment practitioner, or by any other mental health professional licensed by the Department, or by a certified substance abuse counselor. The applicant shall also pass an examination, as required by the Board.

2001, c. 460.

§ 54.1-3507.3. Use of titles

No person shall claim to be, or use the title of, a substance abuse treatment practitioner, a substance abuse counselor, or a substance abuse counseling assistant unless he has been licensed or certified as such pursuant to §§ 54.1-3507, 54.1-3507.1 or § 54.1-3507.2.

2001, c. 460.

§ 54.1-3508. Licensure of certain persons possessing substantially equivalent qualifications, education or experience

Notwithstanding the provisions of § 54.1-3507, (i) 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, and (ii) for a period of time to be determined by the Board but not less than one year after the effective date of the regulations, the Board shall issue such a license to any such person who, in the judgment of the Board, possesses qualifications, education or experience acceptable to the Board and has completed at least one year of supervised clinical experience in substance abuse treatment.

1997, c. 901; 1999, c. 863.

§ 54.1-3509. Continued certification of certain certified substance abuse counselors

On and after July 1, 2001, unless such certification is suspended or revoked by the Board, the Board shall continue to certify as a certified substance abuse counselor any person (i) who was certified by the Board as a certified substance abuse counselor prior to July 1, 2001, or (ii) who registered his supervisory contract with the Board or filed an application with the Board prior to July 1, 2001, for certification as a certified substance abuse counselor and was certified by the

Board after July 1, 2001. The person's scope of practice shall be limited to that set forth in subsection A of § 54.1-3507.1.

2001, c. 460.

Article 2 - REHABILITATION PROVIDERS

§ 54.1-3510. Definitions

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

"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, career and technical 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.

1994, c. 558; 1995, c. 343; 1997, c. 839; 2001, c. 483; 2004, c. 10.

§§ 54.1-3511, 54.1-3512. Repealed

Repealed by Acts 2004, c. 10.

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

A. No person, other than a person licensed by the Boards of Counseling; Medicine; Nursing; Optometry; 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. Subsection A shall not apply to employees or independent contractors of the Commonwealth's agencies and sheltered workshops providing vocational rehabilitation services, under the following circumstances: (i) such employees or independent contractors are not providing vocational rehabilitation services under § 65.2-603 or (ii) such employees are providing vocational rehabilitation services under § 65.2-603 as well as other programs and are certified by the Commission on Rehabilitation Counselor Certification (CRCC) as certified rehabilitation counselors (CRC) or by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES) as Certified Vocational Evaluation Specialists (CVE).

1994, c. 558; 2000, c. 473; 2004, c. 271.

§ 54.1-3514. Certification of existing providers

The Board of Counseling 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.

1994, c. 558; 2000, c. 473.

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

After July 1, 2001, the Board of Counseling 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, unless such person provided rehabilitation services for at least two years immediately preceding July 1, 1997, and has done so continuously since that date without interruption and received a passing score on a Board approved examination. The Board of Counseling, 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.

1997, c. 839; 1999, c. 609; 2000, c. 473.

Chapter 36 - PSYCHOLOGY

§ 54.1-3600. Definitions

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

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

"Board" means the Board of Psychology.

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

"Clinical psychologist" means an individual licensed to practice clinical psychology.

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

"Practice of clinical psychology" includes, but is not limited to:

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

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

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

"Practice of psychology" means the practice of applied psychology, clinical psychology or school psychology.

The "practice of school psychology" means:

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

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

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

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

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

"Psychologist" means a person licensed to practice school, applied or clinical psychology.

"School psychologist" means a person licensed by the Board of Psychology to practice school psychology.

1976, c. 608, § 54-936; 1987, cc. 522, 543; 1988, c. 765; 1994, c. 778; 1996, cc. 937, 980; 2004, c. 11.

§ 54.1-3601. Exemption from requirements of licensure

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

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

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

3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under the 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 any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization, except that any such person who renders psychological services, as defined in this chapter, shall be (i) supervised by a licensed psychologist or clinical psychologist; (ii) licensed by the Department of Education as a school psychologist; or (iii) employed by a school for students with disabilities which is certified by the Board of Education. Any person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the licensure requirements.

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

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

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

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

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

10. Any person duly licensed as a psychologist in another state or the District of Columbia who testifies as a treating psychologist or who is employed as an expert for the purpose of possibly testifying as an expert witness.

1976, c. 608, § 54-944; 1986, c. 581; 1988, c. 765; 1996, cc. 937, 980; 2000, c. 462.

§ 54.1-3602. Administration or prescription of drugs not permitted

This chapter shall not be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 29 (§ 54.1-2900 et seq.) of this title.

1976, c. 608, § 54-945; 1988, c. 765.

§ 54.1-3603. Board of Psychology; membership

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

1976, c. 608, § 54-937; 1981, c. 447; 1982, c. 165; 1985, c. 159; 1986, cc. 464, 510; 1988, cc. 42, 765; 1996, cc. 937, 980.

§ 54.1-3604. Nominations

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

1986, c. 464, § 54-937.1; 1988, c. 765; 1996, cc. 937, 980.

§ 54.1-3605. Powers and duties of the Board

In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:

1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.

2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.

3. To designate specialties within the profession.

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

5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers.

6. To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.

7. To promulgate regulations establishing the requirements for licensure of clinical psychologists that shall include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders.

1976, c. 608, §§ 54-929, 54-931; 1983, c. 115; 1986, cc. 64, 100, 464; 1988, c. 765; 1993, c. 767; 1994, c. 778; 1996, cc. 937, 980; 1997, c. 556; 1999, c. 630; 2001, cc. 186, 198; 2004, c. 11.

§ 54.1-3606. License required

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

B. Notwithstanding the provisions of subdivision 4 of § 54.1-3601 or any Board regulation, the Board of Psychology shall license, as school psychologists-limited, persons licensed by the Board of Education with an endorsement in psychology and a master's degree in psychology. The Board of Psychology shall issue licenses to such persons without examination, upon review of credentials and payment of an application fee in accordance with regulations of the Board for school psychologists-limited.

Persons holding such licenses as school psychologists-limited shall practice solely in public school divisions; holding a license as a school psychologist-limited pursuant to this subsection shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Psychology to offer to the public the services defined in § 54.1-3600.

The Board shall issue persons, holding licenses from the Board of Education with an endorsement in psychology and a license as a school psychologist-limited from the Board of Psychology, a license which notes the limitations on practice set forth in this section.

Persons who hold licenses as psychologists issued by the Board of Psychology without these limitations shall be exempt from the requirements of this section.

1979, c. 408, § 54-939.1; 1988, c. 765; 1996, cc. 937, 980; 1999, cc. 967, 1005.

§ 54.1-3606.1. Continuing education

A. The Board shall promulgate regulations governing continuing education requirements for psychologists licensed by the Board. Such regulations shall require the completion of the equivalent of 14 hours annually in Board-approved continuing education courses for any license renewal or reinstatement after the effective date.

B. The Board shall include in its regulations governing continuing education requirements for licensees a provision allowing a licensee who completes continuing education hours in excess of the hours required by subsection A to carry up to seven hours of continuing education credit forward to meet the requirements of subsection A for the next annual renewal cycle.

C. The Board shall approve criteria for continuing education courses that are directly related to the respective license and scope of practice of school psychology, applied psychology and clinical psychology. Approved continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders. Any licensed hospital, accredited institution of higher education, or national, state or local health, medical, psychological or mental health association or organization may submit applications to the Board for approval as a provider of continuing education courses satisfying the requirements of the Board's regulations. Approved course providers may be required to register continuing education courses with the Board pursuant to Board regulations. Only courses meeting criteria approved by the Board and offered by a Board-approved provider of continuing education courses may be designated by the Board as qualifying for continuing education course credit.

D. All course providers shall furnish written certification to licensed psychologists attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of four years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of four years the written certification issued by any course provider. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary to ensure compliance with continuing education requirements.

E. The Board shall have the authority to grant exemptions or waivers or to reduce the number of continuing education hours required in cases of certified illness or undue hardship.

2000, c. 83; 2015, c. 359.

§ 54.1-3607. Repealed
Repealed by Acts 1996, cc. 937 and 980.

§ 54.1-3608. Repealed
Repealed by Acts 2001, cc. 186 and 198.

§§ 54.1-3609, 54.1-3610. Repealed
Repealed by Acts 2004, c. 11.

§ 54.1-3611. Restriction of practice; use of titles
No person, including licensees of the Boards of Counseling; Medicine; Nursing; Psychology; or Social Work, shall claim to be a certified sex offender treatment provider unless he has been so certified. No person who is exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 shall hold himself out as a provider of sex offender treatment services unless he is certified as a sex offender treatment provider by the Board of Psychology.

1994, c. 778; 1999, c. 630; 2000, c. 473.

§ 54.1-3612. Repealed
Repealed by Acts 1997, c. 698.

§ 54.1-3613. Repealed
Repealed by Acts 2004, cc. 40 and 68.

§ 54.1-3614. Delegation to unlicensed persons
Any licensed psychologist may delegate to unlicensed personnel supervised by him such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by psychologists, if such activities or functions are authorized by and performed for such psychologist and responsibility for such activities or functions is assumed by such psychologist.

1996, cc. 937, 980.

§ 54.1-3615. Repealed
Repealed by Acts 2004, c. 64.

§ 54.1-3616. Use of title "Doctor."
No person regulated under this chapter shall use the title "Doctor" or the abbreviation "Dr." in writing or in advertising in connection with his practice unless he simultaneously uses a clarifying title, initials, abbreviation or designation or language that identifies the type of practice for which he is licensed.

1996, cc. 937, 980.

Chapter 37 - SOCIAL WORK

§ 54.1-3700. Definitions
As used in this chapter, unless the context requires a different meaning:

"Administration" means the process of attaining the objectives of an organization through a system of coordinated and cooperative efforts to make social service programs effective instruments for the amelioration of social conditions and for the solution of social problems.

"Board" means the Board of Social Work.

"Casework" means both direct treatment, with an individual or several individuals, and intervention in the situation on the client's behalf with the objectives of meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening his distress, and enhancing his opportunities and capacities for fulfillment.

"Casework management and supportive services" means assessment of presenting problems and perceived needs, referral services, policy interpretation, data gathering, planning, advocacy, and coordination of services.

"Clinical social worker" means a social worker who, by education and experience, is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Consultation and education" means program consultation in social work to agencies, organizations, or community groups; academic programs and other training such as staff development activities, seminars, and workshops using social work principles and theories of social work education.

"Group work" means helping people, in the realization of their potential for social functioning, through group experiences in which the members are involved with common concerns and in which there is agreement about the group's purpose, function, and structure.

"Planning and community organization" means helping organizations and communities analyze social problems and human needs; planning to assist organizations and communities in organizing for general community development; and improving social conditions through the application of social planning, resource development, advocacy, and social policy formulation.

"Practice of social work" means rendering or offering to render to individuals, families, groups, organizations, governmental units, or the general public service which is guided by special knowledge of social resources, social systems, human capabilities, and the part conscious and unconscious motivation play in determining behavior. Any person regularly employed by a licensed hospital or nursing home who offers or renders such services in connection with his employment in accordance with patient care policies or plans for social services adopted pursuant to applicable regulations when such services do not include group, marital or family therapy, psychosocial treatment or other measures to modify human behavior involving child abuse, newborn intensive care, emotional disorders or similar issues, shall not be deemed to be engaged in the "practice of social

work." Subject to the foregoing, the disciplined application of social work values, principles and methods includes, but is not restricted to, casework management and supportive services, casework, group work, planning and community organization, administration, consultation and education, and research.

"Research" means the application of systematic procedures for the purpose of developing, modifying, and expanding knowledge of social work practice which can be communicated and verified.

"Social worker" means a person trained to provide service and action to effect changes in human behavior, emotional responses, and the social conditions by the application of the values, principles, methods, and procedures of the profession of social work.

1976, c. 608, § 54-941; 1979, c. 398; 1981, c. 555; 1988, c. 765.

§ 54.1-3701. Exemption from requirements of licensure

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

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

2. The activities or services of a student pursuing a course of study in social work in an institution recognized by the Board for purposes of licensure upon completion of the course of study or under the supervision of a practitioner licensed under this chapter; if such activities or services constitute a part of his course of study and are adequately supervised.

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

4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization. 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.

1976, c. 608, § 54-944; 1986, c. 581; 1988, c. 765.

§ 54.1-3702. Administration or prescription of drugs not permitted

This chapter shall not be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 29 (§ 54.1-2900 et seq.) of this title.

1976, c. 608, § 54-945; 1988, c. 765.

§ 54.1-3703. Board of Social Work; members

The Board of Social Work shall regulate the practice of social work.

The Board shall be composed of nine nonlegislative citizen members appointed by the Governor, seven of whom shall be licensed social workers who have been in active practice of social work for at least five years prior to appointment and two of whom shall be nonlegislative citizen members at large. The terms of the members of the Board shall be four years.

1976, c. 608, § 54-942; 1981, cc. 447, 555; 1986, c. 464; 1988, cc. 42, 765; 2006, c. 685.

§ 54.1-3704. 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 Chapter of the National Association of Social Workers and by the Virginia Society for Clinical Social Work. 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.

1986, c. 464, § 54-942.1; 1988, c. 765.

§ 54.1-3705. 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. Expired.

1976, c. 608, §§ 54-929, 54-931; 1983, c. 115; 1986, cc. 64, 100, 464; 1988, c. 765; 1994, c. 778.

§ 54.1-3706. License required

In order to engage in the practice of social work, it shall be necessary to hold a license.

1979, c. 408, § 54-943.1; 1988, c. 765.

§ 54.1-3707. Licenses continued

All licenses heretofore issued by the Board of Social Work and its predecessors shall continue in effect, and be renewable under this chapter.

1976, c. 608, § 54-943; 1988, c. 765.

§ 54.1-3707.1. Educational requirements

The Board shall accept proof of the successful completion of the following as evidence of the satisfaction of the educational requirements for licensure as a clinical social worker: (i) a master's degree in social work with a clinical course of study from a program accredited by the Council on Social Work Education, (ii) a master's degree in social work with a non-clinical concentration from a program accredited by the Council on Social Work Education together with successful completion of the educational requirements for a clinical course of study through a graduate program accredited by the Council on Social Work Education, or (iii) a program of education and training in social work at an educational institution outside the United States recognized by the Council on Social Work Education. For the purposes of this section, "clinical course of study" means graduate coursework that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology, and diversity issues; research; clinical practice with individuals, families, and groups; and clinical practicum that focuses on diagnostic, prevention, and treatment services.

2013, c. 533.

§ 54.1-3708. Continuing education requirements

The Board shall establish in regulations requirements for the continuing education of licensed social workers.

The Board may approve persons who provide continuing education or accredit continuing education programs in order to accomplish the purposes of this section.

1999, c. 575.

§ 54.1-3709. Unlawful designation as social worker

A. It shall be unlawful for any person not licensed under this chapter to use the title "Social Worker" in writing or in advertising in connection with his practice unless he simultaneously uses clarifying initials that signify receiving a baccalaureate or master's degree in social work from an accredited social work school or program approved by the Council on Social Work Education or a doctorate in social work.

B. If a complaint or report of a possible violation of this section is made against any person who is licensed, certified, registered, or permitted, or who holds a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions, that complaint

shall be referred to the applicable board within the Department for disciplinary action. A violation of this section shall be a Class 1 misdemeanor.

C. Notwithstanding the provisions of this section, any individual meeting the qualifications provided for in 42 C.F.R. Part 483 may practice as a "qualified social worker" in any licensed nursing home using such title. However, any such individual may only use the title "social worker" in connection with the activities of the nursing home.

D. Notwithstanding the provisions of this section, any individual meeting the qualifications provided for in 42 C.F.R. § 418.114(b)(3) may practice as a "social worker" in any licensed hospice using such title. However, any such individual may only use the title "social worker" in connection with the activities of the hospice.

E. That nothing in this act shall be construed as requiring the Department of Social Services, or any other entity, to hire licensed social workers or social workers with a baccalaureate or master's degree in social work from an accredited social work school or program approved by the Council on Social Work Education or a doctorate in social work.

2011, c. 794.

Chapter 37.1 - RECREATION SPECIALISTS [Repealed]

§§ 54.1-3710 through 54.1-3716. Repealed

Repealed by Acts 1994, c. 514.

Chapter 38 - VETERINARY MEDICINE

§ 54.1-3800. Practice of veterinary medicine

Any person shall be regarded as practicing veterinary medicine within the meaning of this chapter who represents himself, directly or indirectly, publicly or privately, as a veterinary doctor or uses any title, words, abbreviation or letters in a manner or under circumstances which may reasonably induce the belief that the person using them is qualified to practice veterinary medicine.

Any person shall be deemed to be practicing veterinary medicine who performs the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury, or other physical or mental conditions; including the performance of surgery or dentistry, the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for embryo transfer, for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above.

Nothing in this chapter shall prohibit persons permitted or authorized by the Department of Game and Inland Fisheries to do so from providing care for wildlife as defined in § 29.1-100, provided that the Department determines that such persons are in compliance with its regulations and permit conditions.

Code 1950, § 54-786; c. 574; 1978, c. 539; 1988, c. 765; 2014, c. 626.

§ 54.1-3801. (Effective until July 1, 2018) Exceptions

This chapter shall not apply to:

1. The owner of an animal and the owner's full-time, regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for the purpose of circumventing the requirements of this chapter;

2. Veterinarians licensed in other states called in actual consultation with veterinarians licensed in the Commonwealth who do not open an office or appoint a place to practice within the Commonwealth;

3. Veterinarians employed by the United States or by the Commonwealth while actually engaged in the performance of their official duties;

4. Veterinarians providing free care in underserved areas of Virginia who (i) do not regularly practice veterinary medicine in Virginia, (ii) hold a current valid license or certificate to practice veterinary medicine in another state, territory, district or possession of the United States, (iii) volunteer to provide free care in an underserved area of the Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) file copies of their licenses or certificates issued in such other jurisdiction with the Board, (v) notify the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledge, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any veterinarian whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow a veterinarian who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state; or

5. Persons purchasing, possessing, and administering drugs in a public or private shelter as defined in § 3.2-6500, provided that such purchase, possession, and administration is in compliance with § 54.1-3423.

Code 1950, § 54-786; c. 574; 1978, c. 539; 1988, c. 765; 2002, c. 740; 2008, c. 674; 2009, cc. 149, 169; 2014, c. 148; 2016, c. 479.

§ 54.1-3801. (Effective July 1, 2018) Exceptions

This chapter shall not apply to:

1. The owner of an animal and the owner's full-time, regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for the purpose of circumventing the requirements of this chapter;

2. Veterinarians licensed in other states called in actual consultation with veterinarians licensed in the Commonwealth who do not open an office or appoint a place to practice within the Commonwealth;

3. Veterinarians employed by the United States or by the Commonwealth while actually engaged in the performance of their official duties, with the exception of those engaged in the practice of veterinary medicine, pursuant to § 54.1-3800, as part of a veterinary medical education program accredited by the American Veterinary Medical Association Council on Education and located in the Commonwealth;

4. Veterinarians providing free care in underserved areas of Virginia who (i) do not regularly practice veterinary medicine in Virginia, (ii) hold a current valid license or certificate to practice veterinary medicine in another state, territory, district, or possession of the United States, (iii) volunteer to provide free care in an underserved area of the Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) file copies of their licenses or certificates issued in such other jurisdiction with the Board, (v) notify the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledge, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any veterinarian whose license has been previously suspended or revoked, who has been convicted of a felony, or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow a veterinarian who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state; or

5. Persons purchasing, possessing, and administering drugs in a public or private shelter as defined in § 3.2-6500, provided that such purchase, possession, and administration is in compliance with § 54.1-3423.

Code 1950, § 54-786; c. 574; 1978, c. 539; 1988, c. 765; 2002, c. 740; 2008, c. 674; 2009, cc. 149, 169; 2014, c. 148; 2016, cc. 306, 479.

§ 54.1-3802. Board of Veterinary Medicine; appointment; officers; etc

The Board of Veterinary Medicine shall consist of seven members as follows: five licensed veterinarians, one licensed veterinary technician and one citizen member. The terms of the members of the Board shall be for four years.

The Board shall annually elect a president, vice-president and secretary.

The Board shall meet at least once annually at such times and places as it may prescribe. Special meetings may be held upon the call of the president and any three members. Four members of the Board shall constitute a quorum.

Code 1950, §§ 54-776, 54-777, 54-783, 54-784; 1978, c. 539; 1986, c. 464; 1988, cc. 42, 765; 1995, c. 644.

§ 54.1-3803. Nominations

Nominations of professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Veterinary Medical Association. The Governor may notify such organization of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees.

1986, c. 464, § 54-777.1; 1988, c. 765.

§ 54.1-3804. Specific powers of Board

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

1. To establish essential requirements and standards for approval of veterinary programs.

2. To establish and monitor programs for the practical training of qualified students of veterinary medicine or veterinary technology in college or university programs of veterinary medicine or veterinary technology.

3. To regulate, inspect, and register all establishments and premises where veterinary medicine is practiced.

4. To establish requirements for the licensure of persons engaged in the practice of veterinary medicine, pursuant to § 54.1-3800, as part of a veterinary medical education program accredited by the American Veterinary Medical Association Council on Education and located in the Commonwealth.

1978, c. 539, § 54-784.03; 1988, c. 765; 2016, c. 306.

§ 54.1-3804.1. Expired

Expired.

§ 54.1-3805. License required

No person shall practice veterinary medicine or as a veterinary technician in this Commonwealth unless such person has been licensed by the Board.

1978, c. 539, § 54-786.2; 1988, c. 765.

§ 54.1-3805.1. Repealed

Repealed by Acts 2016, c. 479, cl. 2.

§ 54.1-3805.2. Continuing education

The Board shall adopt regulations which provide for continuing education requirements for relicensure and licensure by endorsement of veterinarians and veterinary technicians. After January 1, 1997, a veterinarian shall be required to complete a minimum of fifteen hours, and a veterinary technician shall be required to complete a minimum of six hours of approved continuing education annually as a condition for renewal of a license. Continuing education courses shall be approved by the Board or by a Board-approved organization. Regulations of the Board adopted pursuant to this section may provide for the waiver of such continuing education requirements upon conditions as the Board deems appropriate.

1995, c. 99.

§ 54.1-3806. Licensed veterinary technicians

The Board may license a veterinary technician to perform acts relating to the treatment or the maintenance of the health of any animal under the immediate and direct supervision of a person licensed to practice veterinary medicine in the Commonwealth or a veterinarian who is employed by the United States or the Commonwealth while actually engaged in the performance of his official duties. No person licensed as a veterinary technician may perform surgery, diagnose, or prescribe medication for any animal.

1978, c. 539, § 54-786.3; 1988, c. 765; 2016, c. 100.

§ 54.1-3806.1. Disclosure forms required

Any animal medical care facility in the Commonwealth, excluding those facilities dealing with livestock, as defined in § 3.2-5900, which does not provide continuous medical care for all animals left in its charge shall, before taking charge of an animal, provide the client or agent thereof with a disclosure form which specifies the hours and days when continuous medical care is not available at the facility. Such form shall be separate and apart from any other form or information provided by the facility. Except in emergency situations when time or circumstances do not permit, such facilities may take charge of an animal only after the client or agent thereof has signed the disclosure form and returned it to the facility. Only one signed form per client shall be required, and the form shall be kept on file by the facility.

1991, c. 621; 1998, c. 158.

§ 54.1-3807. Refusal to grant and to renew; revocation and suspension of licenses and registrations

The Board may refuse to grant or to renew, may suspend or revoke any license to practice veterinary medicine or to practice as a veterinary technician or registration to practice as an equine dental technician if such applicant or holder:

1. Is convicted of any felony or of any misdemeanor involving moral turpitude;

2. Employs or permits any person who does not hold a license to practice veterinary medicine or to practice as a licensed veterinary technician or registration to practice as an equine dental tech-

nician to perform work which can lawfully be performed only by a person holding the appropriate license or registration;

3. Willfully violates any provision of this chapter or any regulation of the Board;

4. Has violated any federal or state law relating to controlled substances as defined in Chapter 34 (§ 54.1-3400 et seq.);

5. Is guilty of unprofessional conduct as defined by regulations of the Board;

6. Uses alcohol or drugs to the extent such use renders him unsafe to practice or suffers from any mental or physical condition rendering him unsafe to practice; or

7. Has had his license to practice veterinary medicine or as a veterinary technician or his registration to practice as an equine dental technician in any other state revoked or suspended for any reason other than nonrenewal.

1978, c. 539, § 54-786.4; 1979, c. 243; 1988, c. 765; 2007, c. 754; 2016, c. 479.

§ 54.1-3808. Repealed

Repealed by Acts 1997, c. 556.

§ 54.1-3809. Repealed

Repealed by Acts 2016, c. 479, cl. 2.

§ 54.1-3810. Report of conviction or injunction to Board

It shall be the duty of the clerk of the court in which any person is convicted of a violation of this chapter or enjoined from practicing veterinary medicine to report the same to the Board.

1978, c. 539, § 54-786.8; 1988, c. 765.

§ 54.1-3811. Veterinary professionals rendering services without charge exempt from liability

Any person licensed by the Board of Veterinary Medicine who, in good faith and without charge or compensation, renders health care services within the limits of his license to any animal, shall not be liable for civil damages for any act or omission resulting from the rendering of such services unless such act or omission was the result of that person's gross negligence or willful misconduct.

1992, c. 400 .

§ 54.1-3812. Release of records

A. A veterinarian licensed by the Board shall release or authorize the release of rabies immunization records and other relevant treatment data of an animal under his care to (i) a requesting physician, physician assistant, or nurse practitioner who is contemplating the administration of the rabies treatment protocol to any person under his care who has been the victim of a bite or other possible rabies exposure from such animal; (ii) a requesting animal control officer or law-enforcement officer who needs to identify the owner of such animal or verify the rabies vac-

cination history of such animal; or (iii) a requesting animal control officer or an official of the Department of Health who is investigating the incident.

B. Any veterinarian licensed by the Board who in good faith releases or authorizes the release of an animal's rabies immunization records and other relevant data pursuant to this section shall not be liable for civil damages resulting from the release of such information.

2000, c. 582; 2004, c. 855; 2006, c. 396; 2010, c. 834.

§ 54.1-3812.1. Reporting of animal cruelty

Any person regulated by the Board who makes a report of suspected animal cruelty or who provides records or information related to a report of suspected cruelty or testifies in any judicial proceeding arising from such report, records, or information shall be immune from any civil or criminal liability or administrative penalty or sanction on account of such report, records, information, or testimony, unless such person acted in bad faith or with malicious purpose.

2010, c. 574; 2016, c. 100.

§ 54.1-3813. Registration of equine dental technicians

A. As used in this section, "equine dental technician" means an individual who satisfies the criteria established by the Board for registration to perform duties relating to the care and maintenance of equine teeth in accordance with this section and regulations promulgated by the Board. A licensed veterinary technician shall practice in accordance with the requirements of § 54.1-3806 and regulations of the Board governing the practice of licensed veterinary technicians.

B. The Board may register a person as an equine dental technician who meets the following criteria: (i) satisfactory evidence that he is of good moral character, (ii) recommendations from at least two licensed veterinarians with practice bases that are at least 50 percent equine, and (iii) evidence that he holds current certification from the International Association of Equine Dentistry or a Board-approved certification program or has satisfactorily completed a Board-approved training program. The Board may register individuals who have not completed a Board-approved training program or do not hold a current certification from the International Association of Equine Dentistry or a Board-approved certification program if they have engaged in acts considered to be those of an equine dental technician as set forth in subsections C and E of this section for at least five years and provide the following: (i) satisfactory evidence of length of time of practice, (ii) recommendations from at least two licensed veterinarians with practice bases that are at least 50 percent equine, and (iii) proof of continued competency satisfactory to the Board.

C. It shall be unlawful for any person not holding a current and valid registration as an equine dental technician or a current and valid license as a veterinarian to perform the following duties:

1. The planing or leveling of equine teeth using nonmotorized hand tools for routine dental maintenance;

2. The planing or leveling of equine teeth using motorized tools performed for routine dental maintenance, or the extraction of wolf teeth premolars including premolars 105, 205, 305 and 405, performed under the direct supervision of a licensed veterinarian where (a) there exists an established client-patient relationship between the veterinarian and the owner, (b) the veterinarian is present, and (c) the veterinarian remains responsible for the sedation of the animal; and

3. Any other task restricted pursuant to regulations promulgated by the Board.

Notwithstanding the foregoing, no equine dental technician shall administer any sedative, tranquilizer, analgesic, prescription medication, or other drug under any circumstances.

D. The provisions of this section shall not prevent or prohibit:

1. Any person from performing tasks related to the practice of equine dentistry under the direct and immediate supervision of a licensed veterinarian or registered equine dental technician during completion of training and experience necessary for registration for a period not to exceed twelve months; or

2. A licensed veterinary technician from planing or leveling equine teeth for routine dental maintenance under the immediate and direct supervision of a licensed veterinarian, provided the licensed veterinary technician has graduated from an American Veterinary Medical Association accredited program with successful completion of coursework in equine dentistry or can document training comparable to that of an equine dental technician.

E. The Board shall promulgate regulations in order to carry out the provisions of this section, which shall include (i) criteria and fees for application and renewal; (ii) requirements for evidence of continued competency for equine dental technicians; and (iii) standards to ensure the health, safety, and welfare of animals treated by equine dental technicians.

2007, c. 754; 2008, c. 490.

Subtitle IV - PROFESSIONS REGULATED BY THE SUPREME COURT

Chapter 39 - ATTORNEYS

Article 1 - GENERAL PROVISIONS

§ 54.1-3900. Practice of law; student internship program; definition

Persons who hold a license or certificate to practice law under the laws of this Commonwealth and have paid the license tax prescribed by law may practice law in the Commonwealth.

Any person authorized and practicing as counsel or attorney in any state or territory of the United States, or in the District of Columbia, may for the purpose of attending to any case he may occasionally have in association with a practicing attorney of this Commonwealth practice in the courts of this Commonwealth, in which case no license fee shall be chargeable against such nonresident attorney.

Nothing herein shall prohibit the limited practice of law by military legal assistance attorneys who are employed by a military program providing legal services to low-income military clients and their dependents pursuant to rules promulgated by the Supreme Court of Virginia.

Nothing herein shall prohibit a limited practice of law under the supervision of a practicing attorney by (i) third-year law students or (ii) persons who are in the final year of a program of study as authorized in § 54.1-3926, pursuant to rules promulgated by the Supreme Court of Virginia.

Nothing herein shall prohibit an employee of a state agency in the course of his employment from representing the interests of his agency in administrative hearings before any state agency, such representation to be limited to the examination of witnesses at administrative hearings relating to personnel matters and the adoption of agency standards, policies, rules and regulations.

Nothing herein shall prohibit designated nonattorney employees of the Department of Social Services from completing, signing and filing petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia in Department cases in the juvenile and domestic relations district courts.

Nothing herein shall prohibit designated nonattorney employees of a local department of social services from appearing before an intake officer to initiate a case in accordance with subsection A of § 16.1-260 on behalf of the local department of social services.

Nothing herein shall prohibit designated nonattorney employees of a local department of social services from completing, signing, and filing with the clerk of the juvenile and domestic relations district court, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, or motions for a rule to show cause.

As used in this chapter "attorney" means attorney-at-law.

Code 1950, § 54-42; 1972, c. 391; 1974, c. 456; 1976, c. 277; 1988, c. 765; 1991, c. 650; 1994, c. 30; 1998, c. 796; 2008, cc. 136, 845; 2016, c. 704.

§ 54.1-3900.01. Protection of client interests; appointment of receiver for practice of a disabled, impaired, absent, deceased, suspended or disbarred attorney

A. Upon a showing that an attorney is unable to properly discharge responsibilities to clients by reason of the attorney's disability, impairment, absence or death or that a suspended or disbarred attorney has not complied with Part Six, Section IV, Paragraph 13 M of the Rules of the Virginia Supreme Court, and that no responsible party capable of properly discharging the attorney's responsibilities to clients is known to exist, the circuit court of any city or county wherein the attorney resides, or in the case of a deceased attorney resided, or maintained an office, upon the ex parte petition of Bar Counsel may issue an order appointing one or more attorneys to serve as receiver with the powers and duties specified in this section. The court, in its discretion, may

require a receiver appointed pursuant to this section to post bond, with or without surety. The court may issue such order if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that by reason of the subject attorney's disability, impairment, absence, or death, the subject attorney is unable to properly discharge his responsibilities to clients; or that the subject attorney's law license has been suspended or revoked and the subject attorney has not complied with Part Six, Section IV, Paragraph 13 M of the Rules of Supreme Court; and that no responsible party capable of properly discharging the subject attorney's responsibilities to clients is known to exist. The Virginia State Bar shall use its best efforts to provide a copy of the petition, affidavits, and notice of the time and place of any hearing to the subject attorney and any known duly appointed personal representative of the subject attorney or the subject attorney's estate.

B. Any receiver so appointed shall be bound by the attorney-client privilege and confidentiality under the Virginia Rules of Professional Conduct with respect to client matters and shall not disclose any privileged or confidential client information without client consent, or as required by court order, or to respond to a Virginia State Bar disciplinary investigation or an investigation by the Virginia State Bar Clients' Protection Fund involving the subject attorney.

C. Any receiver so appointed shall, unless otherwise ordered by the court, (i) prepare and file with the Virginia State Bar an inventory of all case files under the subject attorney's control; (ii) notify in writing all of the subject attorney's clients of the appointment and take whatever action the receiver deems appropriate to protect the interests of the clients until such time as the clients have had an opportunity to obtain successor counsel, and in the case of a deceased attorney, notify in writing the personal representative, if any, of the deceased attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered that the receiver may have a claim against the deceased attorney's estate for fees and costs of the receivership; (iii) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject attorney had signatory authority in connection with his law practice; (iv) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (v) attempt to collect any accounts receivable related to the subject attorney's law practice; (vi) identify and attempt to recover any assets wrongfully diverted from the subject attorney's law practice, or assets acquired with funds wrongfully diverted from the subject attorney's law practice; (vii) terminate the subject attorney's law practice; (viii) reduce to cash all of the assets of the subject attorney's law practice, and in the case of a deceased attorney notify in writing the personal representative, if any, of the deceased attorney's estate, and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered of any proposed liquidations of assets; (ix) determine the nature and amount of all claims of creditors, including clients, of the subject attorney's law practice; and (x) prepare and file with

the court a report of such assets and claims proposing a distribution to such creditors and, in the case of a deceased attorney, notify in writing the personal representative, if any, of the deceased attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered of the proposed distribution of the receivership funds. Upon the court's approval of the receiver's report, at a hearing after such notice as the court may require to creditors, the personal representative of the subject attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered, the receiver shall distribute the funds in the receiver's control, including funds produced by the liquidation of the subject attorney's law practice, first to clients whose funds were or ought to have been held in trust by the subject attorney, then to the receiver for fees, costs and expenses awarded pursuant to subsection E below, and thereafter to the general creditors of the subject attorney's law practice, including clients whose funds were not required to have been held in trust by the subject attorney, and then to the subject attorney or the subject attorney's personal representative.

D. The court may determine whether any assets under the receiver's control should be returned to the subject attorney or the subject attorney's personal representative during the receivership.

E. Any receiver so appointed shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs and expenses. If there are not sufficient nontrust funds to pay the award, then the shortfall shall be paid by the Virginia State Bar, to the extent that the Virginia State Bar has funds available. The Virginia State Bar shall have a claim against the subject attorney or the attorney's estate for the amount paid.

F. This statute is declared to be remedial. Its purpose is to protect the interests of clients adversely affected by attorneys who have either engaged in misconduct or because of disability, impairment, absence, or death are unable to provide legal services for their clients. It is to be liberally administered in order to protect those interests and thereby the public's interest in the quality of legal services provided by Virginia attorneys.

1988, c. 425, § 54-42.01; 1997, c. 239; 2005, cc. 184, 212.

§ 54.1-3901. Practice of patent law

A. For the purposes of this section "an attorney recognized to practice before the United States Patent and Trademark Office in patent cases" is defined as anyone who is authorized to practice law in any state or territory of the United States, or the District of Columbia, and who is also entitled under the rules of that Office to represent another in patent cases. The "practice of patent law" is defined as the performance of all necessary professional services with respect to patent matters concerning which being recognized to practice before that Office for the performance of such services is required and includes legal services related to or connected with the practice of patent law.

B. Any attorney who is admitted as an active member of the Virginia State Bar, limited to patent, trademark, copyright and unfair competition cases only, as of July 1, 2000, may continue such act-

ive membership subject to compliance with minimum requirements of Mandatory Continuing Legal Education Rules of the Supreme Court of Virginia.

C. This section shall not authorize a person recognized to practice before the United States Patent and Trademark Office in patent cases to appear in any court or tribunal other than the tribunals of that Office, unless the person is an active member of the Virginia State Bar, generally or an active member of the Virginia State Bar limited to patent, trademark, copyright and unfair competition cases only as of July 1, 2000. This section shall not be construed to limit the admission to practice law as an active member of the Virginia State Bar generally of any person otherwise qualified for general admission.

D. No attorney who is not an active member of the Virginia State Bar, whether or not authorized to practice before that Office in patent cases, shall be deemed to be admitted to practice patent law within the meaning of subdivision B 1 of § 54.1-3902 or duly licensed or otherwise legally authorized to practice law within the meaning of § 13.1-544.

1962, c. 389, § 54-42.1; 1968, c. 10; 1974, c. 597; 1981, c. 103; 1982, c. 633; 1988, c. 765; 2000, c. 355.

§ 54.1-3902. Professional corporations; professional limited liability companies; and registered limited liability partnerships

A. No professional corporation organized or qualifying under the provisions of Chapter 7 (§ 13.1-542 et seq.) of Title 13.1, professional limited liability company organized or qualifying under the provisions of Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1, or registered limited liability partnership registered under the provisions of Article 9.1 (§ 50-73.132 et seq.) of Chapter 2.2 of Title 50 shall render the professional services of attorneys in this Commonwealth unless the professional corporation, professional limited liability company, or registered limited liability partnership is registered under this section.

B. A professional corporation organized or qualifying under the provisions of Chapter 7 of Title 13.1, a professional limited liability company organized or qualifying under the provisions of Chapter 13 of Title 13.1, or a registered limited liability partnership registered under the provisions of Article 9.1 (§ 50-73.132 et seq.) of Chapter 2.2 of Title 50 shall be issued a professional corporation, a professional limited liability company, or a registered limited liability partnership registration certificate by the Virginia State Bar upon application and payment of a registration fee of $100 provided that:

1. Each member, manager, partner, employee or agent of the professional corporation, the professional limited liability company, or the registered limited liability partnership who will practice law in Virginia is an active member of the Virginia State Bar, or otherwise legally authorized to practice law in Virginia, except that nothing herein shall prohibit a nonlicensed individual from serving as secretary, treasurer, office manager or business manager of any such corporation, limited liability company, or registered limited liability partnership; and

2. The name of the professional corporation, the professional limited liability company, or the registered limited liability partnership and the conduct of its practice conform with the ethical standards which the shareholders, members, managers, partners, employees and agents are required to observe in the practice of law or patent law as defined in § 54.1-3901 in this Commonwealth and that, in the case of a corporation, the corporate name complies with subsection A of § 13.1-630; in the case of a limited liability company, the limited liability company name complies with subsection A of § 13.1-1012; and, in the case of a registered limited liability partnership, the registered limited liability partnership name complies with § 50-73.133.

C. Professional corporation, professional limited liability company, and registered limited liability partnership registration certificates shall be renewed biennially for a fee of $50.

1962, c. 389, § 54-42.1; 1968, c. 10; 1973, c. 484, § 54-42.2; 1974, c. 597; 1981, cc. 103, 516; 1982, c. 633; 1988, c. 765; 1992, c. 574; 1995, c. 116; 2000, c. 355; 2006, cc. 198, 230.

§ 54.1-3903. Oath; qualification; proof of licensure or authorization

Before an attorney may practice in any court in the Commonwealth, he shall take the oath of fidelity to the Commonwealth, stating that he will honestly demean himself in the practice of law and execute his office of attorney-at-law to the best of his ability. An attorney who has qualified before the Supreme Court of Virginia shall be qualified to practice in all courts of the Commonwealth. An attorney who has qualified before a court other than the Supreme Court shall be qualified to practice only in the court which administered his oath.

Each court in which an attorney intends to practice may require the attorney to produce satisfactory evidence of his licensure or authorization.

Code 1950, § 54-43; 1972, c. 131; 1988, c. 765.

§ 54.1-3904. Penalty for practicing without authority

Any person who practices law without being authorized or licensed shall be guilty of a Class 1 misdemeanor. A collection agency may refer debts to an attorney for collection with the creditor's approval of the referral and the fee arrangement and shall not be deemed to be engaged in the unauthorized practice of law. An attorney is permitted by the creditor's authorization to enter into such representation agreements.

Code 1950, § 54-44; 1988, c. 765; 1994, c. 441.

§ 54.1-3905. Furnishing advice and services for compensation in connection with certain debt-pooling plans deemed practicing law

The furnishing of advice or services for compensation to a debtor in connection with a debt-pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors, except as authorized for persons licensed pursuant to § 6.2-2005, shall be deemed to be practicing law. Any person or agency not so authorized or who is not a member of the Virginia State Bar who furnishes or offers to furnish such advice or services for compensation shall be in violation of this section. However, it shall not constitute the practice of law merely to make or

undertake to make payments to creditors on behalf of debtors, provided any person or agency that does so does not also negotiate with creditors, undertake to negotiate with creditors, or hold itself out as undertaking to negotiate with creditors on behalf of one or more debtors. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

1956, c. 584, § 54-44.1; 1975, c. 645; 1988, c. 765; 1994, c. 567; 2004, c. 790.

§ 54.1-3906. Liability to client

Every attorney shall be liable to his client for any damage sustained by the client through the neglect of his duty as such attorney.

Code 1950, § 54-46; 1988, c. 765; 2011, c. 703.

§ 54.1-3907. Reasonable care of attorney in selection of index

Any attorney who in the examination of records in the office of the clerk of any court in this Commonwealth relies upon the correctness of any index found in such office, whether it is the original index prepared by the clerk or by persons other than the clerk, shall be deemed to have used reasonable care in the selection of the index.

1960, c. 441, § 54-44.2; 1988, c. 765.

§ 54.1-3908. Liability for words used in proceedings concerning conduct

No person shall be held liable in any civil action for words written or spoken in any complaint regarding, proceeding concerning, or investigation of, the professional conduct of any member of the Virginia State Bar, unless it is shown that such statements were false and were made willfully and maliciously.

Code 1950, § 54-47; 1988, c. 765; 1992, c. 574; 1996, c. 399.

Article 2 - BAR ORGANIZATION AND GOVERNMENT

§ 54.1-3909. Rules and regulations defining practice of law and prescribing procedures for practice of law by law students, codes of ethics, use of limited liability companies, and disciplinary procedure

The Supreme Court may promulgate rules and regulations:

Defining the practice of law.

Prescribing procedures for the limited practice of law by third-year law students.

Prescribing a code of ethics governing the professional conduct of attorneys including the practice of law or patent law through professional law corporations, limited liability companies, and partnerships, and a code of judicial ethics.

Prescribing procedures for disciplining, suspending, and disbarring attorneys.

Code 1950, § 54-48; 1973, c. 484; 1974, c. 456; 1988, c. 765; 1992, c. 574 .

§ 54.1-3910. Organization and government of Virginia State Bar

The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar. The Virginia State Bar shall act as an administrative agency of the Court for the purpose of investigating and reporting violations of rules and regulations adopted by the Court under this article. All advisory opinions issued by the Virginia State Bar's Standing Committees on Legal Ethics, Lawyer Advertising and Solicitation, and Unauthorized Practice of Law shall be incorporated into the Code of Virginia pursuant to § 30-154. All persons engaged in the practice of law in the Commonwealth shall be active members in good standing of the Virginia State Bar.

Code 1950, § 54-49; 1974, c. 536; 1991, c. 564; 2002, c. 306.

§ 54.1-3910.1. Enforcement, etc., of costs

Orders of the Disciplinary Board regarding unpaid costs assessed by the Clerk of the Disciplinary System pursuant to Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such order by the Disciplinary Board.

2001, c. 225.

§ 54.1-3911. Transmission of certain information to House and Senate Committees for Courts of Justice

The Virginia State Bar is authorized to transmit to the House and Senate Committees for Courts of Justice, upon request of the chairman of either Committee, any evidence that it has in its possession with reference to any pending disciplinary proceeding involving a licensed attorney whose name has been placed before the Committee for consideration for election as a judge of a court of this Commonwealth and the record of any previous disciplinary action taken against the attorney.

1985, c. 264, § 54-49.1; 1988, c. 765.

§ 54.1-3912. Fees

The Supreme Court may promulgate rules and regulations fixing a schedule of fees to be paid by members of the Virginia State Bar for the purpose of administering this article, and providing for the collection and disbursement of such fees; but the annual fees to be paid by any attorney shall not exceed $250.

Code 1950, § 54-50; 1956, c. 256; 1964, c. 332; 1970, c. 605; 1975, c. 218; 1982, c. 602; 1986, c. 205; 1988, c. 765; 1993, c. 38; 1995, c. 15.

§ 54.1-3913. State Bar Fund; receipts; disbursements

The State Bar Fund is continued as a special fund in the state treasury. All fees collected from the members of the Virginia State Bar as provided in § 54.1-3912 shall be paid into the state treasury immediately upon collection and credited to the State Bar Fund. All moneys paid into the Fund are hereby appropriated to the Virginia State Bar for the purpose of administering the provisions of this article. All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Virginia State Bar in accordance with rules and regulations promulgated by the Supreme Court.

Code 1950, § 54-52; 1964, c. 531; 1974, c. 608; 1979, c. 440; 1988, c. 765.

§ 54.1-3913.1. (Effective until July 1, 2020) Clients' Protection Fund

The Clients' Protection Fund is continued as a special fund of the Virginia State Bar. The Fund shall consist of moneys transferred to it from the State Bar Fund and the Virginia State Bar's Administration and Finance Account. Disbursements to the Clients' Protection Fund from the State Bar Fund shall be made only upon approval of the disbursements through the annual budgetary process of the Virginia State Bar. Notwithstanding the provisions of § 54.1-3912, the Supreme Court may adopt rules assessing members of the Virginia State Bar an annual fee of up to $25 to be deposited in the State Bar Fund and transferred to the Clients' Protection Fund.

1996, c. 346; 2007, c. 807.

§ 54.1-3913.1. (Effective July 1, 2020) Clients' Protection Fund

The Clients' Protection Fund is continued as a special fund of the Virginia State Bar. The Fund shall consist of moneys transferred to it from the State Bar Fund and the Virginia State Bar's Administration and Finance Account. Disbursements to the Clients' Protection Fund from the State Bar Fund shall be made only upon approval of the disbursements through the annual budgetary process of the Virginia State Bar.

1996, c. 346.

§ 54.1-3914. Forfeiture of license for failing to pay fees; restoration of license

Any attorney licensed to practice in this Commonwealth who fails for two successive years to pay the annual fees provided for by § 54.1-3912, shall thereby forfeit his license to practice law in this Commonwealth.

On or before July 31 of each year, the Executive Director of the Virginia State Bar shall notify every attorney whose fees for the two preceding years have not been paid. The notice shall be deemed to have been given if deposited by registered or certified mail addressed to such attorney at his address as shown on the Executive Director's official records. If payment is not received by the Executive Director within six months from the date of such notice, he shall remove the name of the attorney from his list of persons qualified to practice law in Virginia, and shall notify the clerk of the Supreme Court of Virginia that the name of the attorney has been removed. The name of any attorney so removed shall be restored only upon application of such person to the Executive Director accompanied by a sum equal to the aggregate of all fees which are due, plus a penalty of $100. Upon receipt of the fees and penalty, the Executive Director shall restore the name of such person to his list of persons qualified to practice law in Virginia and shall notify the clerk of the Supreme Court of Virginia that such name has been restored.

1960, c. 459, § 54-50.1; 1984, c. 359; 1988, c. 765.

§ 54.1-3915. Restrictions as to rules and regulations

Notwithstanding the foregoing provisions of this article, the Supreme Court shall not promulgate rules or regulations prescribing a code of ethics governing the professional conduct of attorneys

which are inconsistent with any statute; nor shall it promulgate any rule or regulation or method of procedure which eliminates the jurisdiction of the courts to deal with the discipline of attorneys. In no case shall an attorney who demands to be tried by a court of competent jurisdiction for the violation of any rule or regulation adopted under this article be tried in any other manner.

Code 1950, § 54-51; 1974, c. 536; 1988, c. 765.

§ 54.1-3915.1. Rules regarding client accounts

The Supreme Court shall not promulgate any disciplinary rules, rule or regulation requiring that attorneys or law firms deposit client funds in interest-bearing accounts, pooled or otherwise, on which the interest is required to be paid to any person or entity other than the client. Any disciplinary rule, rule or regulation previously promulgated which is inconsistent with this section is void and of no effect.

1995, c. 93.

§ 54.1-3916. Legal aid societies

A. The Virginia State Bar through its governing body is authorized to promulgate rules and regulations governing the function and operation of legal aid societies to further the objective of providing legal assistance to persons requiring such assistance but unable to pay for it. To the extent that interest is paid by a financial institution on client funds deposited by attorneys or law firms in pooled interest bearing accounts established and maintained under circumstances which do not conflict with § 54.1-3915.1, any interest earned on such accounts shall be paid by the financial institution periodically, but at least quarterly, to the Legal Services Corporation of Virginia.

B. The rules and regulations adopted under subsection A may be enforced by the Virginia State Bar, or by the Attorney General if so authorized by the Virginia State Bar.

C. It shall be a Class 1 misdemeanor for any person, firm, corporation or other organization to render legal services as a legal aid society, or for any attorney to render legal services at the instance or request of any such person, firm, corporation or organization unless the person, firm, corporation or organization complies with the rules and regulations adopted under subsection A hereof. In addition to the criminal penalty, an injunction shall lie to prevent any violation of this section or rule or regulation adopted hereunder.

1956, Ex. Sess., c. 47; 1958, c. 253; 1988, c. 765; 1995, c. 93.

§ 54.1-3917. Master retirement program

The Virginia State Bar through its governing body is authorized to approve and be a party to a master retirement program for the benefit of the members of the Virginia State Bar, their employees and families, including the power to execute, amend and revoke a master plan and trust agreement and to pay from the State Bar Fund in the manner provided in § 54.1-3913 the printing and administrative costs incurred in the promulgation and explanation of such program to the members of the Virginia State Bar. Any such program entered into or expenditure made before June 28, 1968, is hereby validated.

1968, c. 370, § 54-52.2; 1988, c. 765.

§ 54.1-3917.1. Group or individual insurance policies

The Virginia State Bar, through its governing body, is authorized to endorse insurance coverages or to be a holder of group or individual insurance policies for the benefit of the members of the Virginia State Bar, their employees and families. In connection therewith, the Virginia State Bar is authorized to execute, amend and revoke agreements to provide such endorsement or such group or individual insurance policies to such members, employees and families. All group or individual insurance policies or coverages endorsed or held by the Virginia State Bar before July 1, 1995, are hereby approved.

1995, c. 65.

§ 54.1-3918. Availability of Virginia State Bar membership list

When requested, copies of the Virginia State Bar membership address list shall be made available to Virginia professional legal organizations which operate not for profit and which regularly conduct continuing legal education programs in the Commonwealth. If specified by the requestor, the list shall be made available in computer sorted zip code sequence in a mailing label format suitable for bulk mailing. Lists shall be provided by the Virginia State Bar on a cost recovery basis.

Each request for the mailing list shall be made in writing by requesting organizations to the Executive Director of the Virginia State Bar. Each request shall state the date the list is needed by the requestor and each request shall be postmarked no less than thirty days prior to such date. The cost of mailing or shipping shall be borne by the requestor.

1981, c. 496, § 54-52.2:1; 1988, c. 765.

Article 3 - BOARD OF BAR EXAMINERS

§ 54.1-3919. Composition of Board; quorum

The Board of Bar Examiners shall be responsible for the examination of applicants and otherwise ascertaining the qualifications of applicants for admission to the bar and shall be composed of five attorneys who are residents of the Commonwealth. Three members of the Board shall constitute a quorum for holding examinations or the transaction of other business. The word "Board" when used in this chapter shall mean the Board of Bar Examiners.

Code 1950, §§ 54-53, 54-55; 1988, c. 765; 1998, c. 796.

§ 54.1-3920. Appointment and terms of members

The members of the Board shall be appointed by the Supreme Court for five-year terms. Vacancies shall be filled by the Court for the full term of five years.

Code 1950, § 54-54; 1988, c. 765.

§ 54.1-3921. Board to elect one of its members president; appointment of secretary and treasurer

The Board shall elect one of its members to serve as its president, and may appoint a qualified member of the Virginia State Bar to act as secretary and treasurer of the Board.

Code 1950, § 54-56; 1972, c. 444; 1988, c. 765.

§ 54.1-3922. Powers, rules and regulations

The Board shall do, or cause to be done, all things it considers necessary, convenient or expedient in connection with the preparation, conduct and grading of examinations, in determining the qualifications of applicants, in determining requirements for taking and passing examinations, and in granting such certificates to practice law as may be authorized by the Supreme Court. The Board may promulgate rules and regulations to aid in the exercise of its authority and in the discharge of its duties.

1976, c. 377, § 54-57.1; 1988, c. 765; 1998, c. 796.

§ 54.1-3923. Compensation of members, secretary, treasurer and character and fitness committee; expenses of examinations

The members of the Board and members of any character and fitness committee shall each receive such compensation as established by the Rules of the Supreme Court for the time spent in the discharge of their duties as members, and shall be entitled to reimbursement for such of their actual expenses as are necessary and ordinarily incident to travel as members of the Board or such character and fitness committee to be computed in accordance with §§ 2.2-2814 through 2.2-2826. The compensation of the secretary and treasurer shall be fixed by the Board. The compensation for services and expenses shall not exceed the amount received as fees from applicants, which shall be fixed by the rules and regulations adopted by the Board.

Code 1950, § 54-58; 1954, c. 709; 1956, c. 252; 1960, c. 90; 1966, c. 25; 1970, c. 255; 1987, c. 339; 1988, c. 765; 1992, c. 734; 1993, c. 262 .

§ 54.1-3924. Fees paid by applicants

In order to defray the compensation, mileage and expenses above provided for, the Board shall fix by general rule or special order the fees to be paid by each applicant.

Code 1950, § 54-59; 1988, c. 765.

Article 4 - EXAMINATIONS AND ISSUANCE OF LICENSES

§ 54.1-3925. Application for examination

A person desiring to take an examination under this article shall file with the Board his application therefor in such form as the Board may require not later than May 10 for the next following July examination and December 15 for the next following February examination. An application shall be deemed to be timely filed if (i) it is transmitted expense prepaid to the Office of the Secretary of the Board by priority, express, registered, or certified mail via the United States Postal Service, or by a third party commercial carrier for next-day delivery, and (ii) the official receipt therefor issued by the United States Postal Service or by such third party commercial carrier, which

shall be exhibited on demand of the Secretary, shows such transmission or mailing to the Secretary's office on or before the prescribed deadline.

Code 1950, § 54-60; 1952, c. 553; 1960, c. 379; 1966, c. 157; 1968, c. 74; 1972, cc. 535, 824; 1974, c. 686; 1980, c. 533; 1987, c. 265; 1987, Sp. Sess., c. 2; 1988, c. 765; 1992, c. 734; 1998, c. 71; 2011, c. 709.

§ 54.1-3925.1. Proof of character and fitness required of applicant; character and fitness committee; fees

A. Before issuing to any applicant a license or certificate to practice law in Virginia, the Board shall have found from satisfactory evidence produced by the applicant in such form as the Board may require that the applicant is a person of honest demeanor and good moral character, is over the age of eighteen and possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law.

B. In making such determinations, the Board shall conduct such further inquiries, interviews and hearings as the Board may deem necessary. At the request of the Board, the Supreme Court may appoint a separate character and fitness committee, some of the members of which may be persons who are not licensed attorneys, to assist in reviewing character and fitness evidence and to make recommendations to the Board based upon standards adopted by the Board; however, no applicant shall be denied a license on character and fitness reasons except by action of a majority of the Board, after notice to the applicant and an opportunity for the applicant to be heard before the Board.

C. The Board shall from time to time set character and fitness application fees sufficient to cover the costs of the character and fitness process.

1992, c. 734; 1998, c. 796.

§ 54.1-3925.2. Access to criminal history records

The Board is authorized to obtain criminal history record information relating to an applicant from any state or federal law-enforcement agency. Any information so obtained is for the exclusive use of the Board and the character and fitness committee and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

1992, c. 734 .

§ 54.1-3925.3. Authority for subpoenas; qualified privilege and immunity

A. In the conduct of investigations and hearings, the Board and character and fitness committee may administer oaths and affirmations and may issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and other records or tangible evidence relevant to any such investigation or hearing. Any subpoena shall be issued in the name of the Board and be signed by a member of the Board or by its secretary.

B. If any person fails or refuses to obey a subpoena, or to give testimony, the Board shall notify the circuit court of the county or city wherein the hearing is or was to have been held, or where the documents or tangible things were to have been produced. On receipt of the notice, the circuit court shall issue an order compelling such person's attendance or testimony, or both, or the production of the documents or tangible things, to the same extent as could be required in a proceeding in court.

C. Information furnished to and testimony given before the Board or the character and fitness committee in the course of an investigation or hearing shall be privileged, and any person furnishing information or giving testimony shall be immune from civil liability therefor, unless it is shown that such person was motivated by actual malice.

1992, c. 734 .

§ 54.1-3926. Preliminary proof of education required of applicant

Before an applicant will be permitted to take any examination under this article the applicant shall furnish to the Board satisfactory evidence that he has:

1. Completed all degree requirements from a law school approved by the American Bar Association or the Board; or

2. Received a bachelor's degree from a four-year accredited college or university and studied law for three years, consisting of not less than eighteen hours per week for at least forty weeks per year in the office of an attorney practicing in this Commonwealth, whose full time is devoted to the practice of law; or

3. Studied law for at least three years partly in a law school approved by the American Bar Association or the Board and partly, for not less than eighteen hours per week for at least forty weeks per year, in the office of an attorney practicing in this Commonwealth whose full time is devoted to the practice of law; or

4. Received a bachelor's degree from a four-year accredited college or university and studied law for three years, consisting of not less than eighteen hours per week for at least forty weeks per year, with a retired circuit court judge who served the Commonwealth as a circuit court judge for a minimum of ten years and who at the time of commencement of the three-year study period was retired for not more than five years.

The attorney in whose office or the judge with whom the applicant intends to study shall be approved by the Board, which shall prescribe reasonable conditions as to the course of study.

Code 1950, § 54-62; 1952, c. 553; 1960, c. 379; 1980, c. 533; 1988, c. 765; 1995, c. 336; 1998, cc. 119, 796.

§ 54.1-3927. Time and place of examination

The Board shall hold at least two examinations each year, at such times as it may prescribe by general rule or special order. If only two examinations are held in any one year, they shall not be less

than four months apart. One examination shall be held in the City of Richmond, and one in the City of Roanoke each year, unless for good cause it is necessary to hold it elsewhere.

Code 1950, § 54-63; 1973, c. 284; 1988, c. 765.

§ 54.1-3928. Issuance of license or certificate; list of persons certified to Supreme Court

The Board shall issue a license to practice law in this Commonwealth to every applicant who successfully passes the examination on all the subjects required and complies with the requirements of this chapter and the rules of the Board. The Board shall issue a certificate to practice law in the Commonwealth to an applicant if the Board is satisfied that the applicant meets the criteria for the certificate established by Rules of the Supreme Court.

The license or certificate shall be signed by at least three members of the Board. The Board shall forthwith certify to the Supreme Court a list of persons whom it has licensed or to whom it has issued a certificate, and the list shall be spread upon the records of the Court.

Code 1950, § 54-64; 1988, c. 765; 1998, c. 796.

§ 54.1-3929. Preservation of examination papers

The essay portion of the examination papers shall be kept on file in the office of the secretary and treasurer in Richmond for one year after the examination, after which it may be destroyed.

Code 1950, § 54-65; 1973, c. 284; 1988, c. 765.

§ 54.1-3930. Reexaminations

Any applicant who fails an examination given after July 15, 1960, may be reexamined not more than four additional times upon showing to the Board that he has diligently pursued the study of law since the former examination and that he remains otherwise qualified under the provisions of this article. However, the Board may allow an applicant who has taken the examination five times to take additional examinations when, in the discretion of the Board, the applicant has shown mitigating circumstances which constitute good and sufficient cause for the applicant's failing the prior examination.

Code 1950, § 54-66; 1960, c. 379; 1988, c. 765.

§ 54.1-3931. Granting certificates without examination; law professors

A. The Supreme Court shall have discretion to grant a certificate without examination to any attorney who has been admitted to practice law before the court of last resort of any state or territory of the United States or the District of Columbia for at least five years. The certificate shall entitle the holder, after paying his license tax, to practice in the courts of this Commonwealth.

B. The Supreme Court shall also have discretion to grant a certificate without examination to any person connected with any foreign embassy or legation to appear in the courts of this Commonwealth in all matters connected with his official duties, provided that the person has been admitted to practice in the court of last resort of the jurisdiction of the embassy or legation to

which he is attached or he has received a degree from a law school approved by the American Bar Association.

C. The Supreme Court shall have the authority to promulgate rules and regulations allowing professors in law schools located in the Commonwealth, which are accredited by the American Bar Association, to become associate members of the Virginia State Bar. Nothing in this subsection shall preclude the granting of a certificate without examination to a professor who is otherwise eligible for such a certificate under any other provision of this section.

D. The Supreme Court may authorize the Board or any committee thereof to administer the provisions of this section.

E. All other persons shall take the examinations and comply with the applicable provisions of this chapter.

Code 1950, § 54-67; 1988, c. 765; 1998, c. 796; 2013, c. 396.

Article 5 - FEES

§ 54.1-3932. Lien for fees

A. Any person having or claiming a right of action sounding in tort, or for liquidated or unliquidated damages on contract or for a cause of action for annulment or divorce, may contract with any attorney to prosecute the same, and the attorney shall have a lien upon the cause of action as security for his fees for any services rendered in relation to the cause of action or claim. When any such contract is made, and written notice of the claim of such lien is given to the opposite party, his attorney or agent, any settlement or adjustment of the cause of action shall be void against the lien so created, except as proof of liability on such cause of action. Nothing in this section shall affect the existing law in respect to champertous contracts. In causes of action for annulment or divorce an attorney may not exercise his claim until the divorce judgment is final and all residual disputes regarding marital property are concluded. Nothing in this section shall affect the existing law in respect to exemptions from creditor process under federal or state law.

B. Notwithstanding the provisions in subsection A, a court in a case of annulment or divorce may, in its discretion, exclude spousal support and child support from the scope of the attorney's lien.

Code 1950, § 54-70; 1988, c. 765; 2001, c. 495.

§ 54.1-3933. Decreeing fee out of funds under control of court

No court shall decree or order any fee or compensation to counsel to be paid out of money or property under the control of the court, unless the claim is in the bill, petition, or other proceeding, of which the parties interested have due notice, or unless the parties are notified in writing that application will be made to the court for such decree or order.

Code 1950, § 54-71; 1988, c. 765.

Article 6 - REVOCATION OR SUSPENSION OF LICENSES; DISBARMENT PROCEEDINGS

§ 54.1-3934. Revocation of license by Board

The Board of Bar Examiners may, for good cause, revoke any license issued by it at any time before there has been a qualification under it in any of the courts of this Commonwealth.

Code 1950, § 54-72; 1988, c. 765.

§ 54.1-3935. Procedure for revocation of license

A. If the Supreme Court, the Court of Appeals, or any circuit court of this Commonwealth observes, or if a complaint, verified by affidavit is made by any person to such court, that any attorney has been convicted of a misdemeanor involving moral turpitude or a felony or has violated the Virginia Code of Professional Responsibility, the court may assign the matter to the Virginia State Bar for investigation. Upon receipt of the report of the Virginia State Bar, the court may issue a rule against such attorney to show cause why his license to practice law shall not be revoked. If the complaint, verified by affidavit, is made by a district committee of the Virginia State Bar, the court shall issue a rule against the attorney to show cause why his license to practice law shall not be revoked.

B. If the rule is issued by the Supreme Court or the Court of Appeals, the rule shall be returnable to the Circuit Court of the City of Richmond. At the time the rule is issued by the Supreme Court, the Chief Justice shall designate three circuit court judges to hear and decide the case. If the rule is issued by the Court of Appeals or a circuit court, the issuing court shall certify the fact of such issuance and the time and place of the hearing thereon, to the Chief Justice of the Supreme Court, who shall designate three circuit court judges of circuits other than the circuit in which the case is pending to hear and decide the case. In proceedings under this section, the court shall adopt the Rules and Procedures described in Part Six, Section IV, Paragraph 13 of the Rules of Court.

C. Bar Counsel of the Virginia State Bar shall prosecute the case. Special counsel may be appointed to prosecute the case pursuant to § 2.2-510.

D. Upon the hearing, if the attorney is found guilty by the court, his license to practice law in this Commonwealth shall be revoked or suspended for such time as the court may prescribe. In lieu of revocation or suspension, the court may impose any other sanction authorized by Part Six, Section IV, Paragraph 13 of the Rules of Court. In any case in which the attorney is found guilty of engaging in any criminal activity that violates the Virginia Rules of Professional Conduct and results in the loss of property of one or more of the attorney's clients, the court shall also require, in instances where the attorney is allowed to retain his license, or is permitted to have his license reinstated or restored, that such attorney maintain professional malpractice insurance during the time for which he is licensed to practice law in the Commonwealth. The Virginia State Bar shall establish standards setting forth the minimum amount of coverage that the attorney shall maintain in order to meet the requirements of this subsection. The attorney shall certify to the Virginia

State Bar that he has the required insurance and shall provide the name of the insurance carrier and the policy number.

E. The attorney, may, as of right, appeal from the judgment of the court to the Supreme Court pursuant to the procedure for filing an appeal from a trial court, as set forth in Part 5 of the Rules of Court. In any such appeal, the Supreme Court may, upon petition of the attorney, stay the effect of an order of suspension during the pendency of the appeal. Any order of reprimand shall be automatically stayed prior to or during the pendency of an appeal therefrom. No stay shall be granted in cases where the attorney's license to practice law has been revoked.

F. In any proceeding to revoke the license of an attorney, the attorney shall be entitled to representation by counsel.

G. Nothing in this section shall affect the right of a court to require from an attorney security for his good behavior, or to fine him for contempt of court.

Code 1950, §§ 54-74, 54-75; 1956, Ex. Sess., c. 33; 1964, c. 201; 1970, c. 430; 1972, c. 103; 1980, c. 289; 1984, cc. 289, 703; 1988, c. 765; 1997, c. 238; 1998, cc. 339, 637; 2009, c. 287.

§ 54.1-3936. Protection of client interests in proceedings pending disciplinary action

A. If Bar Counsel has reasonable cause to believe that an attorney is engaging in any activity which is unlawful or violates the Virginia Rules of Professional Conduct and which will result in loss of property of one or more of the attorney's clients or any other person, Bar Counsel may submit an ex parte petition to the circuit court of the city or county wherein the attorney who is the subject of the petition resides or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject attorney or any professional partnership, professional limited liability company, or professional corporation with which the subject attorney is associated. The court may issue such order without notice to the attorney if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the subject attorney's clients or any other person. The papers filed with the court pursuant to this subsection shall be placed under seal.

B. If Bar Counsel has reasonable cause to believe that an attorney is engaging in any activity which is unlawful or in violation of the Virginia Rules of Professional Conduct and which will result in loss of property of one or more of the attorney's clients or any other person, Bar Counsel may file a petition with the circuit court of the county or city wherein the subject attorney resides or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject attorney or any professional partnership, professional limited liability company, or professional corporation with which the subject attorney is associated; and (ii) the appointment of a receiver for all or part of the funds or property of the subject attorney's law

practice or of any professional partnership, professional limited liability company, or professional corporation with which the subject attorney is associated. The subject attorney shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the subject attorney's clients or any other person.

C. In any proceeding under subsection B, any professional partnership, professional limited liability company, or professional corporation with which the subject attorney is associated and any other person or entity known to Bar Counsel to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject attorney's law practice and which property Bar Counsel reasonably believes may become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.

D. The receiver shall, unless otherwise ordered by the court, (i) prepare and file with the Virginia State Bar an inventory of all case files under the subject attorney's control; (ii) notify in writing all of the subject attorney's clients of the appointment and take whatever action the receiver deems appropriate to protect the interests of the clients until such time as the clients have had an opportunity to obtain successor counsel, and in the case of a deceased attorney, notify in writing the personal representative, if any, of the deceased attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered that the receiver may have a claim against the deceased attorney's estate for fees and costs of the receivership; (iii) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject attorney had signatory authority in connection with his law practice; (iv) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (v) attempt to collect any accounts receivable related to the subject attorney's law practice; (vi) identify and attempt to recover any assets wrongfully diverted from the subject attorney's law practice, or assets acquired with funds wrongfully diverted from the subject attorney's law practice; (vii) terminate the subject attorney's law practice; (viii) reduce to cash all of the assets of the subject attorney's law practice, and in the case of a deceased attorney notify in writing the personal representative, if any, of the deceased attorney's estate, and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered of any proposed liquidations of assets; (ix) determine the nature and amount of all claims of creditors, including clients, of the subject attorney's law practice; and (x) prepare and file with the court a report of such assets and claims proposing a distribution to such creditors and, in the case of a deceased attorney,

notify in writing the personal representative, if any, of the deceased attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered of the proposed distribution of the receivership funds. Upon the court's approval of the receiver's report, at a hearing after such notice as the court may require to creditors, the personal representative of the subject attorney's estate and the commissioner of accounts of the circuit court in which the deceased attorney's estate is being administered, the receiver shall distribute the assets of the subject attorney's law practice first to clients whose funds were or ought to have been held in trust by the subject attorney, then to the receiver for fees, costs, and expenses awarded pursuant to subsection E, and thereafter to the general creditors of the subject attorney's law practice, including clients whose funds were not required to have been held in trust by the subject attorney, and then to the subject attorney or the subject attorney's personal representative.

E. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nontrust funds to pay the award, then the shortfall shall be paid by the Virginia State Bar, to the extent that the Virginia State Bar has funds available. The Virginia State Bar shall have a claim against the subject attorney or the subject attorney's estate for the amount paid.

F. The court may determine whether any assets under the receiver's control should be returned to the subject attorney or the subject attorney's personal representative during the receivership.

G. This statute is declared to be remedial. Its purpose is to protect the interests of clients adversely affected by attorneys who have engaged in misconduct. It is to be liberally administered in order to protect those interests and thereby the public's interest in the quality of legal services provided by Virginia attorneys.

1985, c. 418, § 54-74.01; 1988, c. 765; 1992, c. 574; 1997, c. 239; 2005, cc. 184, 212.

§ 54.1-3937. Procedure for revocation of certificate of registration of professional law corporations or professional limited liability companies

A. If the Supreme Court, the Court of Appeals or any circuit court of this Commonwealth observes, or if a complaint, verified by affidavit, is made by any person to a circuit court having jurisdiction where the alleged violation occurred, that any law corporation or professional limited liability company has willfully failed to comply with the applicable ethical standards of the Virginia Code of Professional Responsibility or the applicable statutes governing professional corporations or professional limited liability companies, such court may issue a rule against such law corporation or law professional limited liability company to show cause why its certificate of registration should not be revoked. If the complaint, verified by affidavit, is made by the Bar Counsel or a district committee of the Virginia State Bar, the court shall issue a rule against the law corporation or law professional limited liability company to show cause why its certificate of registration should not be revoked. However, such rule shall not issue if the violation is (i) that of one or several persons

only and the interest of justice and the protection of the public can be fairly served by appropriate disciplinary proceedings against the individuals involved, or (ii) that the law corporation does not have a valid certificate of registration.

B. If the rule is issued by the Supreme Court, the rule shall be returnable to the Circuit Court of the City of Richmond. At the time the rule is issued, the Chief Justice of the Supreme Court shall designate three circuit court judges to hear and decide the case.

If the rule is issued by a circuit court or the Court of Appeals, it shall thereupon certify the fact of such issuance to the Chief Justice of the Supreme Court. The Chief Justice shall designate three circuit court judges of circuits other than the circuit in which the case is pending to hear and decide the case.

C. Bar Counsel of the Virginia State Bar shall prosecute the case. Special counsel may be appointed to prosecute the case pursuant to § 2.2-510.

D. If, after notice and opportunity to be heard, the law corporation or law professional limited liability company is found guilty by the court of a willful failure to comply with the applicable ethical standards in the Virginia Code of Professional Responsibility or the applicable statutes governing professional corporations or professional limited liability companies, the court may (i) reprimand the professional corporation or professional limited liability company, (ii) put it on terms to comply with the applicable law or ethical standards within a reasonable time upon condition that failure to comply shall constitute grounds for suspension or revocation of the certificate of registration or for other disciplinary action, or (iii) suspend or revoke the certificate of registration. If the violation is such that it can be corrected upon notice to the law corporation or law professional limited liability company and it is corrected to the satisfaction of the court, or if the violation is that of one or several persons only, the certificate of registration shall not be suspended or revoked if the interest of justice and the protection of the public can be fairly served by applicable disciplinary proceedings against the individuals involved.

E. The law corporation or professional limited liability company may, as of right, appeal from the judgment of the court to the Supreme Court by petition based upon a true transcript of the record, which shall be made up and certified as in actions at law. In all cases where a professional corporation's or professional limited liability company's certificate of registration has been revoked or suspended by the court, such revocation or suspension shall be suspended pending appeal.

F. In any proceedings under this section the defendant shall be entitled to a full and fair hearing and representation by counsel.

1974, c. 674, § 54-74.1; 1980, c. 289; 1984, c. 703; 1988, c. 765; 1992, c. 574 .

§ 54.1-3938. Service of process in license revocation proceedings

If personal service of process cannot be had upon the defendant in license revocation proceedings, proceedings may be had by order of publication on proper affidavit.

Code 1950, § 54-76; 1987, c. 567; 1988, c. 765.

§ 54.1-3938.1. Subpoena issued pursuant to law of another jurisdiction
Whenever a subpoena is sought in this Commonwealth pursuant to the laws of another jurisdiction for use in lawyer discipline or disability proceedings, and where the request for the subpoena has been duly approved under the laws of the other jurisdiction, the chair or a vice-chair of the Virginia State Bar Disciplinary Board, upon receiving an application from Bar Counsel, may issue a subpoena as provided in this section to compel the attendance of witnesses and production of documents in the county or city in the Commonwealth where the witness resides or is employed or elsewhere as agreed by the witness. The circuit courts shall have the power to enforce a subpoena issued pursuant to this section and to adjudge disobedience thereof as contempt. The privilege extended by this section shall be available only to those jurisdictions that extend a similar privilege for disciplinary proceedings in this Commonwealth.

2000, cc. 24, 188.

Article 7 - SOLICITATION OF PROFESSIONAL EMPLOYMENT

§ 54.1-3939. Definitions
As used in this article:

"Agent" means any person who acts for another with or without compensation at the request, or with the knowledge and acquiescence, of the other in dealing with third persons.

"Runner" or "capper" means any person acting within the Commonwealth as an agent for an attorney in the solicitation of professional employment for the attorney.

"Solicitation of professional employment" means obtaining or attempting to obtain, for an attorney, the opportunity to represent or render other legal services to another person, for which services the attorney will or may receive compensation. Solicitation of professional employment shall not include conduct (i) limited to mere statements of opinion respecting the ability of an attorney, (ii) pursuant to a uniform legal aid or lawyer referral plan approved by the Virginia State Bar or (iii) pursuant to any qualified legal services plan or contract of legal services insurance.

Code 1950, § 54-78; 1956, Ex. Sess., c. 33; 1964, c. 622, §§ 54-83.1:1, 54-83.1:2; 1988, c. 765.

§ 54.1-3940. Solicitation
It shall be unlawful for an attorney to solicit professional employment in a manner that violates the Virginia Code of Professional Responsibility.

1964, c. 622, § 54-83.1:2; 1988, c. 765.

§ 54.1-3941. Unlawful to act as runners or cappers
It shall be unlawful for any person to act singly or in concert with others as a runner or capper for an attorney.

Code 1950, § 54-79; 1956, Ex. Sess., c. 33; 1964, c. 622; 1988, c. 765.

§ 54.1-3942. Validity of contract

Any contract for professional employment secured by an attorney in violation of this article shall be void and unenforceable.

Code 1950, § 54-83; 1964, c. 622, § 54-83.1:4; 1988, c. 765.

§ 54.1-3943. Injunction against running, capping and soliciting

The attorney for the Commonwealth, or any person, firm or corporation against whom any cause of action is or has been asserted, may maintain a suit for an injunction against any attorney who has induced another to solicit or encourage his employment, or against any person, firm, partnership or corporation which has acted for another in the capacity of a runner or capper, or against any person engaged by an attorney to solicit employment for the attorney, whether or not the solicitation was successful. The court may enjoin and permanently restrain such person, his agents, representatives and principals from soliciting any such claims against any person, firm or corporation subsequent to the date of the injunction.

1954, c. 707, § 54-83.1; 1988, c. 765.

§ 54.1-3944. Penalty for violation

Any person violating the provisions of this article shall be guilty of a Class 1 misdemeanor. In addition, any person employed as an officer, director, trustee, clerk, servant or agent of this Commonwealth or of any political subdivision of the Commonwealth found guilty of violating the provisions of this article shall forfeit the right of his office and his employment.

Code 1950, § 54-82; 1964, c. 622, § 54-83.1:3; 1988, c. 765.

Subtitle V - OCCUPATIONS REGULATED BY LOCAL GOVERNING BODIES

Chapter 40 - PAWNBROKERS

§ 54.1-4000. Definition of pawnbroker

"Pawnbroker" means any person who lends or advances money or other things for profit on the pledge and possession of tangible personal property, or other valuable things, other than securities or written or printed evidences of indebtedness or title, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price.

Code 1950, § 54-840; 1988, c. 765; 1998, c. 848.

§ 54.1-4001. License required; license authorized by court; building designated in license; penalty

A. No person shall engage in the business of a pawnbroker without having a valid license issued by the county, city or town in which the pawnbroker conducts such business.

B. The circuit court of any county or city may authorize any county, city or town to issue to any individual, who has not been convicted of a felony or a crime involving moral turpitude in the last

ten years, a license to engage in the business of a pawnbroker in that county, city or town. No such license shall be issued by any county, city or town except with such authority. Prior to the issuance of the license, the applicant shall furnish his date of birth, a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth, and such other information to the licensing authority as may be required by the governing body. The license shall designate the building in which the licensee shall carry on such business.

C. No person shall engage in the business of a pawnbroker in any location other than the one designated in his license, except with consent of the court which authorized the license.

D. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor. Each day's violation shall constitute a separate offense.

Code 1950, §§ 54-841, 54-842; 1982, c. 633; 1986, c. 316; 1988, c. 765; 1998, c. 848.

§ 54.1-4002. Local limitations as to number of pawnshops

A. In addition to all limitations and restrictions and notwithstanding any other relevant provisions of this chapter, the governing body of any county, city or town may reasonably limit by resolution or ordinance the number of pawnshops that may be operated at any one time within its territorial limits.

B. The circuit court of any county or city which has, by resolution or ordinance, limited the number of pawnshops therein shall not authorize any license to any pawnbroker after the commissioner of the revenue or other tax assessing officer of the county, city or town over which it has jurisdiction for the issuance of such licenses has filed with the court a statement that the number of licensed pawnshops within the county, city or town has reached the maximum number of pawnshops authorized to be operated therein, unless the number has been reduced below the maximum prescribed. In the event that a properly licensed pawnbroker sells his business, the circuit court of the county or city shall authorize the county, city or town in which such business operates to issue to the purchaser a new license for the same location if the purchaser has not been convicted of a felony or a crime involving moral turpitude in the last ten years. Prior to the issuance of the license, the purchaser shall furnish his date of birth and such other information to the licensing authority as may be required by the local governing body.

Code 1950, § 54-843; 1982, c. 633; 1988, c. 765; 1998, c. 848.

§ 54.1-4003. Bond required; private action on bond

A. No person shall be licensed as a pawnbroker or engage in the business of a pawnbroker without having in existence a bond with surety in the minimum amount of $50,000 to secure the payment of any judgment recovered under the provisions of subsection B.

B. Any person who recovers a judgment against a licensed pawnbroker for the pawnbroker's misconduct may maintain an action in his own name upon the bond of the pawnbroker if the execution issued upon such judgment is wholly or partially unsatisfied.

Code 1950, § 54-845; 1988, c. 765; 1998, c. 848.

§ 54.1-4004. Memorandum to be given pledgor; fee; lost ticket charge

Every pawnbroker shall at the time of each loan deliver to the person pawning or pledging anything, a memorandum or note, signed by him, containing the information required by § 54.1-4009. A lost-ticket fee of five dollars may be charged, provided that the pawner is notified of the fee on the ticket.

Code 1950, § 54-846; 1968, c. 438; 1983, c. 238; 1988, c. 765; 1998, c. 848.

§ 54.1-4005. Sale of goods pawned

No pawnbroker shall sell any pawn or pledge item until (i) it has been in his possession for the minimum term set forth in the memorandum, but not less than 30 days, plus a grace period of 15 days and (ii) a statement of ownership is obtained from the pawner. If a motor vehicle is pawned, the owner of the motor vehicle shall comply with the requirements of § 46.2-637. In the event of default by the pawner, the pawnbroker shall comply with the requirements of § 46.2-633. Otherwise, the pawnbroker shall comply with the requirements of § 46.2-636 et seq. All sales of items pursuant to this section may be made by the pawnbroker in the ordinary course of his business.

Code 1950, § 54-847; 1986, c. 316; 1988, c. 765; 1998, c. 848; 1999, c. 327; 2012, c. 586.

§§ 54.1-4006, 54.1-4007. Repealed

Repealed by Acts 1998, c. 848.

§ 54.1-4008. Interest chargeable

A. No pawnbroker shall ask, demand or receive a greater rate of interest than ten percent per month on a loan of $25 or less, or seven percent per month on a loan of more than $25 and less than $100, or five percent per month on a loan of $100 or more, secured by a pledge of tangible personal property. No loan shall be divided for the purpose of increasing the percentage to be paid the pawnbroker. Loans may be renewed based on the original loan amount. Loans may not be issued that compound the interest or storage fees from previous loans on the same item.

B. An annual percentage rate computed and disclosed under the provisions of the federal Truth-in-Lending Act shall not be deemed a violation of this section.

Code 1950, § 54-850; 1983, c. 238; 1988, c. 765; 1998, c. 848; 1999, c. 327.

§ 54.1-4009. Records to be kept; credentials of person pawning goods; fee; penalty

A. Every pawnbroker shall keep at his place of business an accurate and legible record of each loan or transaction in the course of his business, including transactions in which secondhand goods, wares, or merchandise is purchased for resale. The account shall be recorded at the time of the loan or transaction and shall include:

1. A description, serial number, and a statement of ownership of the goods, article, or thing pawned or pledged or received on account of money loaned thereon or purchased for resale;

2. The time, date, and place of the transaction;

3. The amount of money loaned thereon at the time of pledging the same or paid as the purchase price;

4. The rate of interest to be paid on such loan;

5. The fees charged by the pawnbroker, itemizing each fee charged;

6. The full name, residence address, telephone number, and driver's license number or other form of identification of the person pawning or pledging or selling the goods, article, or thing, together with a particular description, including the height, weight, date of birth, race, gender, hair and eye color, and any other identifying marks, of such person;

7. Verification of the identification by the exhibition of a government-issued identification card bearing a photograph of the person pawning, pledging, or selling the goods, article, or thing, such as a driver's license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon;

8. A digital image of the form of identification used by the person involved in the transaction;

9. As to loans, the terms and conditions of the loan, including the period for which any such loan may be made; and

10. All other facts and circumstances respecting such loan or purchase.

B. A pawnbroker may maintain at his place of business an electronic record of each transaction involving goods, articles, or things pawned or pledged or purchased. If maintained electronically, a pawnbroker shall retain the electronic records for at least one year after the date of the transaction and make such electronic records available to any duly authorized law-enforcement officer upon request.

C. For each loan or transaction, a pawnbroker may charge a service fee for making the daily electronic reports to the appropriate law-enforcement officers required by § 54.1-4010, creating and maintaining the electronic records required under this section, and investigating the legal title to property being pawned or pledged or purchased. Such fee shall not exceed five percent of the amount loaned on such item or paid by the pawnbroker for such item or $3, whichever is less. Any person, firm, or corporation violating any of the provisions of this section is guilty of a Class 4 misdemeanor.

D. No goods, article, or thing shall be pawned or pledged or received on account of money loaned or purchased for resale if the original serial number affixed to the goods, article, or thing has been removed, defaced, or altered.

E. The Superintendent of State Police shall promulgate regulations specifying the nature of the particular description for the purposes of subdivision A 6.

The Superintendent of State Police shall promulgate regulations specifying the nature of identifying credentials of the person pawning, pledging, or selling the goods, article, or thing. Such credentials shall be examined by the pawnbroker, and an appropriate record retained thereof.

Code 1950, § 54-851; 1976, c. 66; 1986, c. 316; 1988, c. 765; 1990, c. 783; 1998, c. 848; 2001, c. 401; 2003, c. 448; 2013, c. 262.

§ 54.1-4010. Daily reports

A. Every pawnbroker shall prepare a daily report of all goods, articles, or things pawned or pledged with him or sold to him that day and shall file such report by noon of the following day with the chief of police or other law-enforcement officer of the county, city, or town where his business is conducted designated by the local attorney for the Commonwealth to receive it. The report shall include the pledgor's or seller's name, residence, and driver's license number or other form of identification; a photograph or digital image of the form of identification used by the pledgor or seller; and a description of the goods, articles, or other things pledged or sold and, unless maintained in electronic format, shall be in writing and clearly legible to any person inspecting it. A pawnbroker may compile and maintain the daily report in an electronic format and, if so maintained, shall file the required daily reports electronically with the appropriate law-enforcement officer through use of a disk, electronic transmission, or any other electronic means of reporting approved by the law-enforcement officer. Any local governing body, may by ordinance, require a pawnbroker to maintain and file a daily report electronically through the use of a disk, electronic transmission, or any other electronic means of reporting approved by the law-enforcement officer.

B. The Department of State Police shall adopt regulations for the uniform reporting of information required by this section.

C. Any person, firm, or corporation violating any of the provisions of this section is guilty of a Class 4 misdemeanor.

Code 1950, § 54-853; 1988, c. 765; 1998, c. 848; 2001, c. 401; 2002, c. 201; 2003, c. 448; 2010, cc. 540, 657; 2013, c. 262.

§ 54.1-4011. Officers may examine records or property; warrantless search and seizure authorized

Every pawnbroker and every employee of the pawnbroker shall admit to the pawnbroker's place of business during regular business hours, any duly authorized law-enforcement officer of the jurisdiction where the business is being conducted, or any law-enforcement official of the state or federal government. The pawnbroker or employee shall permit the officer to (i) examine all records required by this chapter and any article listed in a record which is believed by the officer to be missing or stolen and (ii) search for and take into possession any article known to him to be missing, or known or believed by him to have been stolen. However, the officer shall not take possession of any article without providing to the pawnbroker a receipt.

Code 1950, §§ 54-852, 54-854; 1988, c. 765; 1990, c. 683; 1998, c. 848.

§ 54.1-4012. Property pawned or purchased not to be disfigured or changed

No property received on deposit or pledged or purchased by any pawnbroker shall be disfigured or its identity destroyed or affected in any manner (i) so long as it continues in pawn or in the possession of the pawnbroker while in pawn or (ii) in an effort to obtain a serial number or other information for identification purposes.

Code 1950, § 54-855; 1988, c. 765; 1998, c. 848; 1999, c. 327; 2003, c. 448.

§ 54.1-4013. Care of tangible personal property; evaluation fee

A. Pawnbrokers shall store, care for and protect all of the tangible personal property in the pawnbroker's possession and protect the property from damage or misuse. Nothing in this chapter shall be construed to mean that pawnbrokers are insurers of pawned property in their possession.

B. A pawnbroker may charge a monthly storage fee for any items requiring storage, which fee shall not exceed five percent of the amount loaned on such item.

Code 1950, § 54-856; 1988, c. 765; 1998, c. 848.

§ 54.1-4014. Penalties; violation of the Virginia Consumer Protection Act

A. Except as otherwise provided in § 54.1-4001, any licensed pawnbroker who violates any of the provisions of this chapter shall be guilty of a Class 4 misdemeanor. In addition, the court may revoke or suspend the pawnbroker's license for second and subsequent offenses.

B. Additionally, any violation of the provisions of the chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

Code 1950, §§ 54-857, 54-858; 1988, c. 765; 1998, c. 848.

Chapter 41 - PRECIOUS METALS DEALERS

§ 54.1-4100. Definitions

For the purposes of this chapter, unless the context requires a different meaning:

"Coin" means any piece of gold, silver or other metal fashioned into a prescribed shape, weight and degree of fineness, stamped by authority of a government with certain marks and devices, and having a certain fixed value as money.

"Dealer" means any person, firm, partnership, or corporation engaged in the business of (i) purchasing secondhand precious metals or gems; (ii) removing in any manner precious metals or gems from manufactured articles not then owned by the person, firm, partnership, or corporation; or (iii) buying, acquiring, or selling precious metals or gems removed from manufactured articles. "Dealer" includes all employers and principals on whose behalf a purchase is made, and any employee or agent who makes any purchase for or on behalf of his employer or principal.

The definition of "dealer" shall not include persons engaged in the following:

1. Purchases of precious metals or gems directly from other dealers, manufacturers, or wholesalers for retail or wholesale inventories, provided that the selling dealer has complied with the provisions of this chapter.

2. Purchases of precious metals or gems from a qualified fiduciary who is disposing of the assets of an estate being administered by the fiduciary.

3. Acceptance by a retail merchant of trade-in merchandise previously sold by the retail merchant to the person presenting that merchandise for trade-in.

4. Repairing, restoring or designing jewelry by a retail merchant, if such activities are within his normal course of business.

5. Purchases of precious metals or gems by industrial refiners and manufacturers, insofar as such purchases are made directly from retail merchants, wholesalers, dealers, or by mail originating outside the Commonwealth.

6. Persons regularly engaged in the business of purchasing and processing nonprecious scrap metals which incidentally may contain traces of precious metals recoverable as a by-product.

"Gems" means any item containing precious or semiprecious stones customarily used in jewelry.

"Precious metals" means any item except coins composed in whole or in part of gold, silver, platinum, or platinum alloys.

1981, c. 581, § 54-859.15; 1988, c. 765.

§ 54.1-4101. Records to be kept; copy furnished to local authorities

A. Every dealer shall keep at his place of business an accurate and legible record of each purchase of precious metals or gems. The record of each purchase shall be retained by the dealer for at least 24 months and shall set forth the following:

1. A complete description of all precious metals or gems purchased from each seller. The description shall include all names, initials, serial numbers, or other identifying marks or monograms on each item purchased, the true weight or carat of any gem, and the price paid for each item;

2. The date, time, and place of receiving the items purchased;

3. The full name, residence address, work place, home and work telephone numbers, date of birth, sex, race, height, weight, hair and eye color, and other identifying marks of the person selling the precious metals or gems;

4. Verification of the identification by the exhibition of a government-issued identification card bearing a photograph of the person selling the precious metals or gems, such as a driver's license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon;

5. A statement of ownership from the seller; and

6. A digital image of the form of identification used by the person involved in the transaction.

B. The information required by subdivisions A 1 through A 3 shall appear on each bill of sale for all precious metals and gems purchased by a dealer, and a copy shall be mailed or delivered within 24 hours of the time of purchase to the chief law-enforcement officer of the locality in which the purchase was made.

1981, c. 581, § 54-859.16; 1986, c. 316; 1988, c. 765; 1990, c. 783; 1991, c. 174; 2013, c. 262.

§ 54.1-4101.1. Officers may examine records or property; warrantless search and seizure authorized

Every dealer or his employee shall admit to his place of business during regular business hours the chief law-enforcement officer or his designee of the jurisdiction in which the dealer is located or any law-enforcement officer of the state or federal government. The dealer or his employee shall permit the officer to (i) examine all records required by this chapter and any article listed in a record which is believed by the officer to be missing or stolen and (ii) search for and take into possession any article known to him to be missing, or known or believed by him to have been stolen.

1991, c. 174 .

§ 54.1-4102. Credentials and statement of ownership required from seller

No dealer shall purchase precious metals or gems without first (i) ascertaining the identity of the seller by requiring an identification issued by a governmental agency with a photograph of the seller thereon, and at least one other corroborating means of identification, and (ii) obtaining a statement of ownership from the seller.

The governing body of the locality wherein the dealer conducts his business may determine the contents of the statement of ownership.

1981, c. 581, § 54-859.17; 1986, c. 316; 1988, c. 765.

§ 54.1-4103. Prohibited purchases

A. No dealer shall purchase precious metals or gems from any seller who is under the age of eighteen.

B. No dealer shall purchase precious metals or gems from any seller who the dealer believes or has reason to believe is not the owner of such items, unless the seller has written and duly authenticated authorization from the owner permitting and directing such sale.

1981, c. 581, § 54-859.18; 1988, c. 765.

§ 54.1-4104. Dealer to retain purchases

A. The dealer shall retain all precious metals or gems purchased for a minimum of 15 calendar days from the date on which a copy of the bill of sale is received by the chief law-enforcement officer of the locality in which the purchase is made. Until the expiration of this period, the dealer shall not sell, alter, or dispose of a purchased item in whole or in part, or remove it from the county, city, or town in which the purchase was made.

B. If a dealer performs the service of removing precious metals or gems, he shall retain the metals or gems removed and the article from which the removal was made for a period of 15 calendar days after receiving such article and precious metals or gems.

1981, c. 581, § 54-859.19; 1988, c. 765; 2012, c. 532.

§ 54.1-4105. Record of disposition

Each dealer shall maintain for at least twenty-four months an accurate and legible record of the name and address of the person, firm, or corporation to which he sells any precious metal or gem in its original form after the waiting period required by § 54.1-4104. This record shall also show the name and address of the seller from whom the dealer purchased the item.

1981, c. 581, § 54-859.20; 1988, c. 765.

§ 54.1-4106. Bond or letter of credit required of dealers when permit obtained

A. Every dealer shall secure a permit as required by § 54.1-4108, and each dealer at the time of obtaining such permit shall enter into a recognizance to the Commonwealth secured by a corporate surety authorized to do business in this Commonwealth, in the penal sum of $10,000, conditioned upon due observance of the terms of this chapter. In lieu of a bond, a dealer may cause to be issued by a bank authorized to do business in the Commonwealth a letter of credit in favor of the Commonwealth for $10,000.

B. If any county, city, or town has an ordinance which regulates the purchase and sale of precious metals and gems pursuant to § 54.1-4111, such bond or letter of credit shall be executed in favor of the local governing body.

C. A single bond upon an employer or principal may be written or a single letter of credit issued to cover all employees and all transactions occurring at a single location.

1981, c. 581, § 54-859.21; 1988, c. 765.

§ 54.1-4107. Private action on bond or letter of credit

Any person aggrieved by the misconduct of any dealer which violated the provisions of this chapter may maintain an action for recovery in any court of proper jurisdiction against the dealer and his surety. Recovery against the surety shall be only for that amount of the judgment which is unsatisfied by the dealer.

1981, c. 581, § 54-859.22; 1988, c. 765.

§ 54.1-4108. Permit required; method of obtaining permit; no convictions of certain crimes; approval of weighing devices; renewal; permanent location required

A. No person shall engage in the activities of a dealer as defined in § 54.1-4100 without first obtaining a permit from the chief law-enforcement officer of each county, city, or town in which he proposes to engage in business.

B. To obtain a permit, the dealer shall file with the proper chief law-enforcement officer an application form which includes the dealer's full name, any aliases, address, age, date of birth, sex, and

fingerprints; the name, address, and telephone number of the applicant's employer, if any; and the location of the dealer's place of business. Upon filing this application and the payment of a $200 application fee, the dealer shall be issued a permit by the chief law-enforcement officer or his designee, provided that the applicant has not been convicted of a felony or crime of moral turpitude within seven years prior to the date of application. The permit shall be denied if the applicant has been denied a permit or has had a permit revoked under any ordinance similar in substance to the provisions of this chapter.

C. Before a permit may be issued, the dealer must have all weighing devices used in his business inspected and approved by local or state weights and measures officials and present written evidence of such approval to the proper chief law-enforcement officer.

D. This permit shall be valid for one year from the date issued and may be renewed in the same manner as such permit was initially obtained with an annual permit fee of $200. No permit shall be transferable.

E. If the business of the dealer is not operated without interruption, with Saturdays, Sundays, and recognized holidays excepted, the dealer shall notify the proper chief law-enforcement officer of all closings and reopenings of such business. The business of a dealer shall be conducted only from the fixed and permanent location specified in his application for a permit.

F. The chief law-enforcement officer may waive the permit fee for retail merchants that are not required to be licensed as pawnbrokers under Chapter 40 (§ 54.1-4000 et seq.), provided the retail merchant has a permanent place of business and purchases of precious metals and gems do not exceed five percent of the retail merchant's annual business.

1981, c. 581, § 54-859.23; 1986, c. 316; 1988, c. 765; 2014, cc. 22, 611.

§ 54.1-4109. Exemptions from chapter

A. The chief law-enforcement officer of a county, city or town, or his designee, may waive by written notice implementation of any one or more of the provisions of this chapter, except § 54.1-4103, for particular numismatic, gem, or antique exhibitions or craft shows sponsored by nonprofit organizations, provided that the purpose of the exhibitions is nonprofit in nature, notwithstanding the fact that there may be casual purchases and trades made at such exhibitions.

B. Neither the provisions of this chapter nor any local ordinances dealing with the subject matter of this chapter shall apply to the sale or purchase of coins.

C. Neither the provisions of this chapter nor any local ordinance dealing with the subject matter of this chapter shall apply to any bank, branch thereof, trust company or bank holding company, or any wholly owned subsidiary thereof, engaged in buying and selling gold and silver bullion.

1981, c. 581, §§ 54-859.24, 54-859.27; 1984, c. 583, § 54-859.28; 1988, c. 765.

§ 54.1-4110. Penalties; first and subsequent offenses

A. Any person convicted of violating any of the provisions of this chapter shall be guilty of a Class 2 misdemeanor for the first offense. Upon conviction of any subsequent offense he shall be guilty of a Class 1 misdemeanor.

B. Upon the first conviction of a dealer for violation of any provision of this chapter, the chief law-enforcement officer may revoke the dealer's permit for one full year from the date the conviction becomes final. Such revocation shall be mandatory for two full years from the date the conviction becomes final upon a second conviction.

1981, c. 581, § 54-859.25; 1988, c. 765; 2010, c. 100.

§ 54.1-4111. Local ordinances

Nothing in this chapter shall prevent any county, city, or town in this Commonwealth from enacting an ordinance regulating dealers in precious metals and gems which parallels this chapter, or which imposes terms, conditions, and fees that are stricter, more comprehensive, or larger than those imposed by this chapter. In any event, the terms, conditions, and fees imposed by this chapter shall constitute minimum requirements in any local ordinance. Any fee in excess of the one specified in § 54.1-4108 shall be reasonably related to the cost of enforcement of such local ordinance.

1981, c. 581, § 54-859.26; 1988, c. 765.

Chapter 42 - DEALERS IN FIREARMS

§ 54.1-4200. Definitions

For the purpose of this chapter, unless the context requires a different meaning:

"Dealer in firearms" means (i) any person, firm, partnership, or corporation engaged in the business of selling, trading or transferring firearms at wholesale or retail; (ii) any person, firm, partnership, or corporation engaged in the business of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or (iii) any person, firm, partnership, or corporation that is a pawnbroker.

"Engaged in business" means as applied to a dealer in firearms a person, firm, partnership, or corporation that devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through repetitive purchase or resale of firearms, but such term shall not involve a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

"Firearms show" means any gathering or exhibition, open to the public, not occurring on the permanent premises of a dealer in firearms, conducted principally for the purposes of exchanging, selling or trading firearms as defined in § 18.2-308.2:2.

1989, c. 490; 1993, c. 477 .

§ 54.1-4201. Inspection of records

A. Every dealer in firearms shall keep at his place of business, for not less than a period of two years, the original consent form required to be completed by § 18.2-308.2:2 for each firearm sale.

B. Every dealer in firearms shall admit to his place of business during regular business hours the chief law-enforcement officer, or his designee, of the jurisdiction in which the dealer is located, or any law-enforcement official of the Commonwealth, and shall permit such law-enforcement officer, in the course of a bona fide criminal investigation, to examine and copy those federal and state records related to the acquisition or disposition of a particular firearm required by this section. This section shall not be construed to authorize the seizure of any records.

1989, c. 490; 1993, cc. 461, 493; 2005, c. 859.

§ 54.1-4201.1. Notification by sponsor of firearms show to State Police and local law-enforcement authorities required; records; penalty

A. No promoter of a firearms show shall hold such show without giving notice at least 30 days prior to the show to the State Police and the sheriff or chief of police of the locality in which the firearms show will be held. The notice shall be given on a form provided by the State Police. A separate notice shall be required for each firearms show.

"Promoter" means every person, firm, corporation, club, association, or organization holding a firearms show in the Commonwealth.

The promoter shall maintain for the duration of the show a list of all vendors or exhibitors in the show for immediate inspection by any law-enforcement authorities, and within five days after the conclusion of the show, by mail, by hand, by email, or by fax, transmit a copy of the complete vendor or exhibitor list to the law-enforcement authorities to which the 30-day prior notice was required. The vendor or exhibitor list shall contain the full name and residence address and the business name and address, if any, of the vendors or exhibitors.

B. A willful violation of this section shall be a Class 3 misdemeanor.

C. The provisions of this section shall not apply to firearms shows held in any town with a population of not less than 1,995 and not more than 2,010, according to the 1990 United States census.

1993, c. 477; 2005, c. 193.

§ 54.1-4201.2. (Contingent effective date -- see Editor's notes) Firearm transactions by persons other than dealers; voluntary background checks

A. The Department of State Police shall be available at every firearms show held in the Commonwealth to make determinations in accordance with the procedures set out in § 18.2-308.2:2 of whether a prospective purchaser or transferee is prohibited under state or federal law from possessing a firearm. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police.

Unless otherwise required by state or federal law, any party involved in the transaction may decide whether or not to have such a determination made.

The Department of State Police may charge a reasonable fee for the determination.

B. The promoter, as defined in § 54.1-4201.1, shall give the Department of State Police notice of the time and location of a firearms show at least 30 days prior to the show. The promoter shall provide the Department of State Police with adequate space, at no charge, to conduct such prohibition determinations. The promoter shall ensure that a notice that such determinations are available is prominently displayed at the show.

C. No person who sells or transfers a firearm at a firearms show after receiving a determination from the Department of State Police that the purchaser or transferee is not prohibited by state or federal law from possessing a firearm shall be liable for selling or transferring a firearm to such person.

D. The provisions of § 18.2-308.2:2, including definitions, procedures, and prohibitions, shall apply, mutatis mutandis, to the provisions of this section.

2016, cc. 44, 45.

§ 54.1-4202. Penalties for violation of the provisions of this chapter

Any person convicted of a first offense for willfully violating the provisions of this chapter shall be guilty of a Class 2 misdemeanor. Any person convicted of a second or subsequent offense under the provisions of this chapter shall be guilty of a Class 1 misdemeanor.

1989, c. 490 .

Chapter 43 - ITINERANT MERCHANTS

§ 54.1-4300. Definitions

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

"Infant formula" or "baby formula" means any food manufactured, packaged and labeled specifically for sale for consumption by a child under the age of two years.

"Itinerant merchant" means a merchant who transports an inventory of new merchandise to a building, vacant lot, or other location and who, at that location, displays, sells or offers to sell the new merchandise to the public. Itinerant merchant shall not include a merchant with an established store, regularly open to the public; a licensed merchant with a regularly serviced supply route or location; or a merchant who purchases merchandise directly from a manufacturer.

"New merchandise" means goods or products which are not used but are in a similar condition as the goods or products wholesaled by manufacturers or suppliers to established retail stores for first-time purchase by consumers. New merchandise shall not include (i) crafts or goods made by the seller or his own household; (ii) food stuffs; (iii) the seller's own household personal property; (iv) merchandise sold by nonprofit charitable, educational or religious organizations or at events

sponsored by such organizations; or (v) merchandise sold during parades, festivals, sporting or entertainment events, civic or fundraising activities sponsored by nonprofit charitable, educational or religious organizations.

"Nonprescription drug" means any substances or mixture of substances containing medicines or drugs for which no prescription is required and which are generally sold for internal or topical use in the cure, mitigation, treatment, or prevention of disease in human beings.

1999, c. 701; 2002, cc. 138, 529.

§ 54.1-4301. Records to be kept

Every itinerant merchant shall keep an accurate and legible record of his acquisition of the new merchandise. The records of such acquisition shall be retained by the itinerant merchant for at least twelve months from the display, sale or offer for sale of new merchandise and shall set forth the following:

1. A complete description of the new merchandise, including but not limited to product name and quantity of the new merchandise;

2. The time, date, and place of the acquisition of the new merchandise;

3. The amount of money paid for the new merchandise; and

4. Evidence of the legitimate purchase of the new merchandise, including but not limited to a receipt or bill of lading.

1999, c. 701.

§ 54.1-4302. Officer may examine records or property

An itinerant merchant shall permit any local, state or federal law-enforcement officer to examine the records required pursuant to § 54.1-4301 and to inspect any article listed in the record.

1999, c. 701.

§ 54.1-4303. Local ordinances

Nothing in this chapter shall prevent any county, city or town in the Commonwealth from enacting an ordinance regulating itinerant merchants.

1999, c. 701.

§ 54.1-4304. Bona fide purchaser

Nothing in this chapter shall affect bona fide purchaser status as to title to new merchandise otherwise applicable to an itinerant merchant.

1999, c. 701.

§ 54.1-4305. Prohibited sale of certain merchandise; penalty

A. No itinerant merchant shall offer for sale or knowingly permit the sale of any infant formula, baby formula or nonprescription drugs. This section shall not apply to any person who maintains

for public inspection a valid authorization identifying such person as an authorized representative of the manufacturer or distributor of the prohibited merchandise.

B. Any person convicted of violating this section shall be guilty of a Class 3 misdemeanor on the first offense. Upon conviction of any subsequent offense he shall be guilty of a Class 2 misdemeanor.

2002, cc. 138, 529.

§ 54.1-4306. Penalties

Except as otherwise provided in § 54.1-4305, any licensed itinerant merchant who violates any provision of this chapter shall be guilty of a Class 4 misdemeanor.

2004, c. 127.

Subtitle VI - PROFESSIONS REGULATED BY OTHER ENTITIES

Chapter 44 - PUBLIC ACCOUNTANTS

§ 54.1-4400. Definitions

As used in this chapter, unless the context clearly indicates otherwise:

"Accredited institution" means a degree-granting college or university accredited either by (i) one of the six major regional accrediting organizations-Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Commission on Colleges and Universities, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges-or their successors; or (ii) an accrediting organization demonstrating to the Board periodically, as prescribed by the Board, that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations.

"Assurance" means any form of expressed or implied opinion or conclusion about the conformity of a financial statement with any recognition, measurement, presentation, or disclosure principles for financial statements.

"Attest services" means audit, review, or other attest services for which standards have been established by the Public Company Accounting Oversight Board, by the Auditing Standards Board or the Accounting and Review Services Committee of the American Institute of Certified Public Accountants, or by any successor standard-setting authorities.

"Board" means the Virginia Board of Accountancy.

"Compilation services" means compiling financial statements in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

"Continuing professional education" means the education that a person obtains after passing the CPA examination and that relates to services provided to an employer in academia, government, or industry using the CPA title or to services provided to the public using the CPA title.

"CPA" means certified public accountant.

"CPA examination" means the national uniform CPA examination approved and administered by the board of accountancy of a state or by the board's designee.

"CPA wall certificate" means the symbolic document suitable for wall display that is issued by the board of accountancy of a state to a person meeting the requirements to use the CPA title in that state.

"Executive Director" means the Executive Director of the Board.

"Experience" means employment in academia, a firm, government, or industry in any capacity involving the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board, to provide services to an employer using the CPA title or to the public using the CPA title.

"Facilitated State Board Access" or "FSBA" means the sponsoring organization's process whereby it provides the Board access to peer review results via a secure website.

"Financial statement" means a presentation of historical or prospective financial information about one or more persons or entities.

"Financial statement preparation services" means financial statement preparation services for which standards have been established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

"Firm" means an entity formed by one or more licensees as a sole proprietorship, a partnership, a corporation, a limited liability company, or any other type of entity permitted by law.

"License of another state" means the license that is issued by the board of accountancy of a state other than Virginia that gives a person the privilege of using the CPA title in that state or that gives a firm the privilege of providing attest services, compilation services, and financial statement preparation services to persons and entities located in that state.

"Licensed" means holding a Virginia license or the license of another state.

"Licensee" means a person or firm holding a Virginia license or the license of another state.

"Peer review" means a review of a firm's attest services, compilation services, and financial statements preparation services that is conducted in accordance with the applicable monitoring program of the American Institute of Certified Public Accountants or its successor, or with another monitoring program approved by the Board.

"Practice of public accounting" means the giving of an assurance other than (i) by the person or persons about whom the financial information is presented or (ii) by one or more owners, officers, employees, or members of the governing body of the entity or entities about whom the financial information is presented.

"Providing services to an employer using the CPA title" means providing to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board.

"Providing services to the public using the CPA title" means providing services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3.

"Sponsoring organization" means a Board-approved professional society or other organization responsible for the facilitation and administration of peer reviews through use of its peer review program and applicable peer review standards.

"State" means any state of the United States, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

"Using the CPA title in Virginia" means using "CPA," "Certified Public Accountant," or "public accountant" (i) in any form or manner of verbal communication to persons or entities located in Virginia or (ii) in any form or manner of written communication to persons or entities located in Virginia, including but not limited to the use in any abbreviation, acronym, phrase, or title that appears in business cards, the CPA wall certificate, Internet postings, letterhead, reports, signs, tax returns, or any other document or device.

"Virginia license" means a license that is issued by the Board giving a person the privilege of using the CPA title in Virginia or a firm the privilege of providing attest services, compilation services, and financial statement preparation services to persons and entities located in Virginia.

2001, c. 832; 2003, c. 291; 2004, c. 602; 2007, c. 804; 2014, cc. 40, 755; 2015, c. 287.

§ 54.1-4401. Applicability of chapter

A. This chapter shall not be construed to prevent any person who is not licensed from:

1. Using the description "accountant" or "bookkeeper";

2. Stating that he practices accounting or bookkeeping;

3. Performing services involving the use of accounting skills;

4. Rendering tax services, or management advisory or consulting services;

5. Keeping the books of account and related accounting records; or

6. Preparing financial statements without providing assurance.

B. This chapter shall not be construed to prevent any person who is not licensed from stating that he has prepared, compiled, assembled or drafted a financial statement, provided he does not use any additional language that comprises an assurance or make any claims, representations, or statements prohibited by § 54.1-4414.

C. The prohibitions of § 54.1-4414 and the other provisions of this chapter shall not be construed to preclude any person who is not licensed from including a statement on financial statements indicating that no assurance is provided on the financial statements or using the following language: "I (We) have compiled the accompanying (financial statements) of (name of entity) as of (time period) and for the (period) then ended. A compilation is limited to presenting in the form of financial statements information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. Management has elected to omit substantially all (or certain) required disclosures (and the statement of cash flows). If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the (entity's) financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about these matters."

D. The provisions of this chapter shall not be construed, interpreted, or applied to prohibit any public official or public employee from performing his duly authorized or mandated duties.

2001, c. 832; 2007, c. 804; 2015, c. 287.

§ 54.1-4402. Board; membership; qualifications; powers and duties

A. The Board of Accountancy established under the former § 54.1-2000 and previously operating in the Department of Professional and Occupational Regulation is hereby continued and reestablished as an independent board in the executive branch of state government.

B. The Board shall consist of seven members appointed by the Governor as follows: one member shall be a public member who may be an accountant who is not licensed but otherwise meets the requirements of clauses (i) and (ii) of § 54.1-107; one member shall be an educator in the field of accounting who holds a Virginia license; four members shall be holders of Virginia licenses who have been actively engaged in providing services to the public using the CPA title for at least three years prior to appointment to the Board; and one member shall hold a Virginia license and for at least three years prior to appointment to the Board shall have been actively engaged in providing services to the public using the CPA title or in providing services to an employer in government or industry using the CPA title.

C. (Effective until October 1, 2016) Members of the Board shall serve for terms of four years. The Governor may remove any member as provided in subsection B of § 2.2-108. Any member of the Board whose Virginia license is revoked or suspended shall automatically cease to be a member of the Board.

C. (Effective October 1, 2016) Members of the Board shall serve for terms of four years. The Governor may remove any member as provided in subsection A of § 2.2-108. Any member of the Board whose Virginia license is revoked or suspended shall automatically cease to be a member of the Board.

D. The Board shall restrict the practice of public accounting and the use of the CPA title in Virginia to licensed persons and firms as specified in §§ 54.1-4409.1 and 54.1-4412.1.

E. The Board shall restrict the provision of attest services, compilation services, and financial statement preparation services to persons or entities located in Virginia and as specified in § 54.1-4412.1. However, this shall not affect the privilege of a person who is not licensed to include a statement on financial statements indicating that no assurance is provided on the financial statements, to say that financial statements have been compiled, or to use the compilation language as prescribed by subsections B and C of § 54.1-4401.

F. The Board shall take such actions as may be authorized by this chapter to ensure the continued competence of persons using the CPA title in Virginia and firms providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia and to aid the public in determining their qualifications.

G. The Board shall take such actions as may be authorized by this chapter to ensure that persons using the CPA title in Virginia and firms providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia adhere to the standards of conduct and practice in § 54.1-4413.3 and regulations promulgated by the Board.

H. The Board shall have the responsibility of enforcing this chapter and may by regulation establish rules and procedures for the implementation of the provisions of this chapter.

2001, c. 832; 2003, c. 291; 2004, c. 602; 2007, c. 804; 2015, c. 287.

§ 54.1-4403. General powers and duties of the Board

The Board shall have the power and duty to:

1. Establish the qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity.

2. Examine, or cause to be examined, the qualifications of each applicant for licensure, including the preparation, administration and grading of the CPA examination.

3. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system.

4. Levy and collect fees for the issuance, renewal, or reinstatement of Virginia licenses that are sufficient to cover all expenses of the administration and operation of the Board.

5. Levy on holders of Virginia licenses special assessments necessary to cover expenses of the Board.

6. Initiate or receive complaints concerning the conduct of holders of Virginia licenses or concerning their violation of the provisions of this chapter or regulations promulgated by the Board, and to take appropriate disciplinary action if warranted.

7. Initiate or receive complaints concerning the conduct of persons who use the CPA title in Virginia under the substantial equivalency provisions of § 54.1-4411 or firms that provide attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia under the provisions of subsection C of § 54.1-4412.1, and to take appropriate disciplinary action if warranted.

8. Initiate or receive complaints concerning violations of the provisions of this chapter or regulations promulgated by the Board by persons who use the CPA title in Virginia under the substantial equivalency provisions of § 54.1-4411 or firms that provide attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia under the provisions of subsection C of § 54.1-4412.1, and to take appropriate disciplinary action if warranted.

9. Revoke, suspend, or refuse to reinstate a Virginia license for just causes as prescribed by the Board.

10. Revoke or suspend, for just causes as prescribed by the Board, a person's privilege of using the CPA title in Virginia under the substantial equivalency provisions of § 54.1-4411 or a firm's privilege of providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia under the provisions of subsection C of § 54.1-4412.1.

11. Establish requirements for peer reviews.

12. Establish continuing professional educational requirements as a condition for issuance, renewal, or reinstatement of a Virginia license.

13. Expand or interpret the standards of conduct and practice in § 54.1-4413.3.

14. Enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board.

15. Do all things necessary and convenient for carrying into effect this chapter and regulations promulgated by the Board.

2001, c. 832; 2004, c. 602; 2007, c. 804; 2015, c. 287.

§ 54.1-4404. Board to employ Executive Director; legal counsel

A. The Board shall employ an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall direct the affairs of the Board; keep records of all proceedings, transactions, communications, and official acts of the Board; be custodian of all records of the Board;

and perform such duties as the Board may require. The Executive Director shall call a meeting of the Board at the direction of the chair of the Board or upon the written request of three or more Board members. The Executive Director, with approval of the Board, may employ such additional staff as needed. The annual salary of the Executive Director shall be established by the Board.

B. The Office of the Attorney General shall provide counsel to the Board. In addition, subject to the approval of the Attorney General, the Board may, from time to time, employ such other counsel as it deems necessary.

2001, c. 832; 2007, c. 804.

§ 54.1-4405. Board of Accountancy Fund; receipts; disbursements

A. The Board of Accountancy Fund (the Fund) is established as a special fund in the state treasury. All fees collected as provided in this chapter and regulations promulgated by the Board, shall be paid into the state treasury immediately upon collection and credited to the Fund. Any interest income shall accrue to the Fund. All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board.

B. Notwithstanding any law to the contrary, the Board shall have the discretion to use the moneys in the Fund to support its operations as the Board deems appropriate.

2001, c. 832; 2007, c. 804.

§ 54.1-4405.1. Board of Accountancy Trust Account; creation; expenditures; excess moneys

A. There is hereby created in the state treasury a special nonreverting fund (except as set forth in subsection B), to be known as the Board of Accountancy Trust Account (the Trust Account). The purpose of the Trust Account is to provide a supplemental source of funds to the Board on a timely basis for (i) its use in the study, research, investigation, or adjudication of matters involving possible violations of the provisions of this chapter or regulations promulgated by the Board or (ii) any other purpose that the Board determines is germane to its statutory purposes and cannot otherwise be funded through the Fund. The Trust Account shall consist of transfers from time to time by the Board from the Fund and earnings on the Trust Account.

B. All disbursements from the Trust Account shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board. Funds remaining in the Trust Account at the end of a biennium shall continue to remain in the Trust Account and accrue earnings. Upon a determination by the Board that the Trust Account balance exceeds the amount needed for the purposes set forth in subsection A, the Board may transfer the excess to the Fund.

2004, c. 602; 2007, c. 804.

§ 54.1-4406. Powers and duties of the Executive Director

Within the parameters of policies and guidelines established by the Board, the Executive Director shall have the power and duty to:

1. Employ personnel and assistance necessary for the operation of the Board and the purposes of this chapter;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of the duties of the Board and the execution of its powers under this chapter, including, but not limited to, contracts with the United States government, with agencies and governmental subdivisions of the Commonwealth, and with other states;

3. Accept grants from the United States government, its agencies and instrumentalities and any other source, and to these ends, the Board shall have the power to comply with conditions and execute agreements that are necessary, convenient, or desirable;

4. Serve as the secretary of the Board;

5. Maintain all records of the Board;

6. Collect and account for all fees and deposit them into the Board of Accountancy Fund, from which the expenses of the Board shall be paid;

7. Enforce all statutes and regulations the Executive Director is required to administer;

8. Exercise other powers necessary to function as the sole administrative officer of the Board; and

9. Perform any additional administrative functions prescribed by the Board.

2001, c. 832; 2007, c. 804.

§ 54.1-4407. Enforcement of laws by the Executive Director or investigators; authority of investigators appointed by the Executive Director

A. The Executive Director or investigators appointed by him shall:

1. Be sworn to enforce the statutes and regulations pertaining to the Board;

2. Have the authority to investigate violations of the statutes and regulations that the Executive Director is required to enforce;

3. Have the authority to issue summonses for violations of the provisions of this chapter or regulations promulgated by the Board.

B. In the event a person or entity that is issued a summons by the Executive Director or investigators appointed by him fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the Executive Director or the investigators may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant under § 19.2-72.

C. The Executive Director and all investigators appointed by the Executive Director are vested with the authority to administer oaths or affirmations (i) for the purpose of receiving complaints and

conducting investigations of violations of the provisions of this chapter or any regulations promulgated by the Board or (ii) in connection with any investigation conducted on behalf of the Board. The Executive Director and the investigators are vested with the authority to (a) obtain, serve, and execute any warrant, paper, or process issued by any court or magistrate or by the Board under the authority of the Executive Director and (b) request and receive criminal history information under the provisions of § 19.2-389.

2001, c. 832; 2004, c. 602; 2007, c. 804.

§ 54.1-4408. Subpoenas

In addition to the authority granted in § 2.2-4022 to issue subpoenas and the right to issue subpoenas granted the Board, the Executive Director or a designated subordinate shall have the right to make an ex parte application to the circuit court for the city or county where evidence sought is kept or where a person or firm does business, for the issuance of a subpoena for the production of documents. The subpoena shall be requested to further the investigation of a sworn complaint within the jurisdiction of the Board by requesting production of any relevant records, documents, or physical or other evidence of any person or firm regulated by the Board. The court shall be authorized to issue and compel compliance with the subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena for the production of documents requiring the immediate production of evidence.

2001, c. 832; 2007, c. 804.

§ 54.1-4409. Repealed

Repealed by Acts 2007, c. 804, cl. 2.

§ 54.1-4409.1. Licensing requirements for persons

A. A person must be licensed in order to use the CPA title in Virginia.

1. The person shall hold a Virginia license if he provides services to the public using the CPA title and the principal place of business in which he provides those services is in Virginia.

2. Other persons shall not be required to hold a Virginia license in order to use the CPA title in Virginia provided that they hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411.

B. The Board shall prescribe the methods, fees, and continuing professional education requirements for a person to apply for the issuance, renewal, or reinstatement of a Virginia license.

C. The Board has the authority to refuse to grant a person the privilege of using the CPA title in Virginia if, based upon all the information available, the Board finds that the person is unfit or unsuited to use the CPA title in Virginia. The Board shall not refuse to grant a person the privilege of using the CPA title in Virginia solely because of a criminal conviction.

2007, c. 804.

§ 54.1-4409.2. How a person may obtain a Virginia license

A. A person who has not held the license of any state may obtain a Virginia license under this subsection.

1. To be considered for a Virginia license, the person seeking licensure shall:

a. Provide documentation that he has obtained from one or more accredited institutions or from the National College at least 150 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent, as defined by the Board;

b. Provide documentation that he has passed the CPA examination;

c. Describe his continuing professional education since he passed the CPA examination. The Board shall determine whether his continuing professional education complies with the continuing professional education requirement prescribed by the Board for that period; and

d. Describe his experience. The Board shall determine whether his experience complies with the experience requirement prescribed by the Board.

2. After evaluating information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.

B. A person who does not hold the license of another state but has previously held the license of another state may obtain a Virginia license under this subsection.

1. To be considered for a Virginia license, the person seeking licensure shall:

a. Disclose to the Board each state in which he has held a license;

b. Disclose, for each of those states, why the license is no longer held and provide documentation from the board of accountancy concerning whether he has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board;

c. Describe the semester hours of education he has obtained from colleges and universities. The Board shall determine whether the education obtained is substantially equivalent to the education that would have been required by the Board when the person passed the CPA examination;

d. Describe his continuing professional education since he last held the license of another state. The Board shall determine whether his continuing professional education complies with requirement prescribed by the Board for reinstatement of a Virginia license; and

e. Describe his experience. The Board shall determine whether his experience complies with the experience requirement prescribed by the Board.

2. After evaluating the information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.

C. A person who holds the license of another state may obtain a Virginia license under this subsection.

1. To be considered for a Virginia license, the person seeking licensure shall:

a. Disclose to the Board each state in which he holds or has held a license;

b. Provide, for each state in which the person holds a license, documentation from the board of accountancy concerning whether he is in good standing with the board, whether there are any pending actions alleging violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board, and whether he has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board;

c. Disclose, for each state in which the person has held a license, why the license is no longer held and provide documentation from the board of accountancy concerning whether he has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board;

d. Describe the semester hours of education he has obtained from colleges and universities. The Board shall determine whether the education obtained is substantially equivalent to the education that would have been required by the Board when the person passed the CPA examination;

e. Describe his continuing professional education during the most recent reporting period that would be required for the holder of a Virginia license. The Board shall determine whether his continuing professional education complies with the continuing professional education requirement prescribed by the Board for that period; and

f. Describe his experience. The Board shall determine whether his experience complies with the experience requirement prescribed by the Board.

2. After evaluating the information provided by the person, the Board may request additional information and may impose additional requirements for obtaining a Virginia license.

2007, c. 804.

§ 54.1-4410. Repealed

Repealed by Acts 2007, c. 804, cl. 2.

§ 54.1-4411. Substantial equivalency provisions for persons who hold the license of another state

A. A person who holds the license of another state shall be considered to have met requirements that are substantially equivalent to those prescribed by the Board if:

1. The Board has determined that the education, CPA examination, and experience requirements of the state are substantially equivalent to those prescribed by the Board, or

2. The person has demonstrated meeting education, CPA examination, and experience requirements that are substantially equivalent to those prescribed by the Board.

B. A person who holds the license of another state and meets the substantial equivalency provisions of subsection A shall not be required to hold a Virginia license to use the CPA title in Virginia provided that either (i) he provides services to the public using the CPA title and the principal place of business in which he provides those services is in other states or (ii) he does not provide services to the public using the CPA title. However, to use the CPA title in Virginia, the person shall:

1. Consent to be subject to:

a. The provisions of this chapter and regulations promulgated by the Board that apply to the holder of a Virginia license,

b. The jurisdiction of the Board in all disciplinary proceedings arising out of matters related to his use of the CPA title in Virginia, and

c. The Board's authority to revoke or suspend his privilege to use the CPA title in Virginia and to impose penalties for the person's violations of the provisions of this chapter and regulations promulgated by the Board.

2. Consent to the appointment of the executive director of the board of accountancy of the state that issued the license as his agent, upon whom process may be served (i) in any action or proceeding by the Board against him, or (ii) in any civil action in Virginia courts arising out of his using the CPA title in Virginia. In the event he holds a license from more than one state, the Board shall establish which executive director shall serve as his agent.

3. Consent to the personal and subject matter jurisdiction of the courts of Virginia in any civil action arising out of his use of the CPA title in Virginia and agree that the proper venue for such actions is in Virginia.

4. Agree to cease using the CPA title in Virginia if he is no longer licensed.

C. A holder of a Virginia license who is using the CPA title in another state under substantial equivalency provisions of statutes of the state or regulations promulgated by the board of accountancy of the state shall be subject to disciplinary action by the Board for an act or omission committed in that state. The Board may investigate any complaint made to or by the board of accountancy of any state related to the person's use of the CPA title in that state.

D. The Board may cooperate and share information with appropriate authorities in other states in investigations or enforcement matters concerning violations of the provisions of this chapter or regulations promulgated by the Board and comparable statutes or regulations of other states or boards of accountancy.

2001, c. 832; 2003, c. 291; 2007, c. 804.

§ 54.1-4412. Repealed

Repealed by Acts 2007, c. 804, cl. 2.

§ 54.1-4412.1. Licensing requirements for firms

A. Only a firm can provide attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia. However, this shall not affect the privilege of a person who is not licensed to include a statement on financial statements indicating that no assurance is provided on the financial statements, to say that financial statements have been compiled, or to use the compilation language, as prescribed by subsections B and C of § 54.1-4401.

B. A firm that provides attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia shall obtain a Virginia license if the principal place of business in which it provides those services is in Virginia.

C. A firm that is not required to obtain a Virginia license may provide attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia if:

1. The firm can lawfully provide attest services, compilation services, or financial statement preparation services to persons or entities in the state where its principal place of business is located; and

2. The firm complies with subdivisions D 1, 2, 4, 5, 6, and 8 and subsection F; and

3. The firm's personnel working on the engagement either (i) hold a Virginia license or (ii) hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411; or

4. The firm's personnel working on the engagement are under the supervision of a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411.

D. For a firm to obtain a Virginia license:

1. As determined on a firm-wide basis:

a. At least 51 percent of the owners of the firm shall be licensees, trustees of an eligible employee stock ownership plan as defined in § 13.1-543, or a firm that meets this requirement; and

b. At least 51 percent of the voting equity interest in the firm shall be owned by persons who are licensees, by trustees of an eligible employee stock ownership plan as defined in § 13.1-543, or by a firm that meets this requirement.

If the death, retirement, or departure of an owner causes either of these requirements not to be met, the requirement shall be met within one year after the death, retirement, or departure of the owner.

2. The Board shall prescribe requirements concerning the hours that owners who are not licensees work in the firm and may prescribe other requirements for those persons.

3. All attest services, compilation services, and financial statement preparation services provided for persons and entities located in Virginia shall be under the supervision of a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411.

4. Any person who releases or authorizes the release of reports on attest services, compilation services, or financial statement preparation services provided for persons or entities located in Virginia shall:

a. Either (i) hold a Virginia license or (ii) hold the license of another state and comply with the substantial equivalency provisions of § 54.1-4411; and

b. Meet any additional requirements the Board prescribes.

5. The firm shall conduct its attest services, compilation services, and financial statement preparation services in conformity with the standards of conduct and practice in § 54.1-4413.3 and regulations promulgated by the Board.

6. The firm shall be enrolled in the applicable monitoring program of the American Institute of Certified Public Accountants or its successor, or in another monitoring program for attest services, compilation services, and financial statement preparation services that is approved by the Board. In addition, the firm shall comply with any requirements prescribed by the Board in response to the results of peer reviews.

7. The firm shall participate in the American Institute of Certified Public Accountants', or sponsoring organizations', Facilitated State Board Access process, or its successor process, for peer reviews.

8. The name of the firm shall not be false, misleading, or deceptive.

E. The Board shall prescribe the methods and fees for a firm to apply for the issuance, renewal, or reinstatement of a Virginia license.

F. An entity may not use the CPA title in Virginia unless it meets the requirements of subdivision D 1.

2007, c. 804; 2014, cc. 40, 755; 2015, c. 287.

§§ 54.1-4413, 54.1-4413.1. Repealed

Repealed by Acts 2007, c. 804, cl. 2.

§ 54.1-4413.2. The renewal and reinstatement of licenses and lifting the suspension of privileges

A. A Virginia license shall provide its holder with a 12-month privilege to use the CPA title in Virginia or provide attest services, compilation services, and financial statement preparation services to persons and entities located in Virginia.

B. The person or firm holding the license shall have an additional 12-month period after the expiration of a license to renew the license.

1. The Board may prescribe renewal fees and requirements that increase based on the amount of time the person or firm allows to elapse before applying for renewal.

2. During the additional 12-month period, the person or firm shall be considered to hold a Virginia license.

C. If the license is not renewed by the end of the additional 12-month period, it shall be considered to have expired and the person or firm shall be considered to no longer hold a Virginia license.

D. A person whose Virginia license expired may obtain a new Virginia license under subsection C of § 54.1-4409.2 if he holds the license of another state.

E. The license of a person whose Virginia license expired and who does not hold the license of another state may be reinstated under this subsection. In addition, a person whose privilege of using the CPA title in Virginia was suspended may have the suspension lifted under this subsection.

1. To be considered for reinstatement of a Virginia license or lifting the suspension of the privilege of using the CPA title in Virginia:

a. The person shall disclose to the Board why he no longer holds a Virginia license or why his privilege of using the CPA title in Virginia was suspended.

b. The person shall disclose to the Board each state in which he holds or has held a license.

c. For each of the states in which the person holds a license, he shall provide documentation from the board of accountancy about whether he is in good standing with the board, whether there are any pending actions alleging violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board, and whether he has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board.

d. For each of the states in which the person has held a license, the person shall disclose why he no longer holds a license and provide documentation from the board of accountancy concerning whether he has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board.

e. The person shall describe his continuing professional education since his Virginia license expired or was suspended. The Board shall determine whether his continuing professional education complies with the continuing professional education requirement prescribed by the Board for that period.

2. After evaluating the information provided by the person, the Board may request additional information and may impose additional requirements for reinstatement of the Virginia license or lifting the suspension.

3. The Board shall communicate to the person its decision and, if the request for reinstatement or lifting the suspension is denied, the reasons for the denial. The request may be resubmitted when the person believes the matters affecting the request have been satisfactorily resolved. The person may request a proceeding in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

F. The license of a firm whose Virginia license expired may be reinstated under this subsection. In addition, a firm whose privilege of providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia was suspended may have the suspension lifted under this subsection.

1. To be considered for reinstatement of a Virginia license or lifting the suspension of the privilege of providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia:

a. The firm shall disclose to the Board why it no longer holds a Virginia license or why its privilege of providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia was suspended.

b. The firm shall disclose to the Board each state in which it holds or has held a license.

c. For each of the states in which the firm holds a license, it shall provide documentation from the board of accountancy concerning whether it is in good standing with the board, whether there are any pending actions alleging violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board, and whether it has been found guilty of any violations of these standards of conduct and practice.

d. For each of the states in which the firm has held a license, the firm shall disclose why it no longer holds a license and provide documentation from the board of accountancy concerning whether it has been found guilty of any violations of the standards of conduct and practice established by statutes of the state or regulations promulgated by the board.

2. After evaluating the information provided by the firm, the Board may request additional information and may impose additional requirements for reinstatement of the Virginia license or lifting the suspension.

3. The Board shall communicate to the firm its decision and, if the request for reinstatement or lifting the suspension is denied, the reasons for the denial. The request may be resubmitted when the firm believes the matters affecting the request have been satisfactorily resolved. The firm may request a proceeding in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

G. The Board shall consider granting the privilege of using the CPA title in Virginia, or the privilege of providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia, to persons or firms that have had the privilege revoked only when the person or firm demonstrates to the Board that there are special facts and circumstances that warrant reconsideration by the Board of whether it should allow the person or firm to have the privilege.

2007, c. 804; 2015, c. 287.

§ 54.1-4413.3. Standards of conduct and practice

Persons using the CPA title in Virginia and firms providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia shall conform to the following standards of conduct and practice.

1. Exercise sensitive professional and moral judgment in all activities.

2. Act in a way that serves the public interest, honors the public trust, and demonstrates commitment to professionalism.

3. Perform all professional responsibilities with the highest sense of integrity, maintain objectivity and freedom from conflicts of interest in discharging professional responsibilities, and avoid knowingly misrepresenting facts or inappropriately subordinating judgment to others.

4. Follow the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants, or any successor standard-setting authorities.

5. Follow the technical standards, and the related interpretive guidance, issued by committees and boards of the American Institute of Certified Public Accountants that are designated by the Council of the American Institute of Certified Public Accountants to promulgate technical standards, or that are issued by any successor standard-setting authorities.

6. Follow the standards, and the related interpretive guidance, as applicable under the circumstances, issued by the Comptroller General of the United States, the Federal Accounting Standards Advisory Board, the Financial Accounting Standards Board, the Governmental Accounting Standards Board, the Public Company Accounting Oversight Board, the U. S. Securities and Exchange Commission, comparable international standard-setting authorities, or any successor standard-setting authorities.

7. Do not engage in any activity that is false, misleading, or deceptive.

2007, c. 804; 2015, c. 287.

§ 54.1-4413.4. Penalties

A. Penalties the Board may impose consist of:

1. Revoking the privilege of using the CPA title in Virginia or providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia;

2. Suspending or refusing to reinstate the privilege of using the CPA title in Virginia or providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia;

3. Reprimanding, censuring, or limiting the scope of practice of any person using the CPA title in Virginia or any firm providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia;

4. Placing any person using the CPA title in Virginia or any firm providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia on probation, with or without terms, conditions, and limitations;

5. Requiring a firm holding a Virginia license to have an accelerated peer review conducted as the Board may specify or to take other remedial actions;

6. Requiring a person holding a Virginia license to satisfactorily complete additional or specific continuing professional education as the Board may specify; and

7. Imposing a monetary penalty up to $100,000 for each violation of the provisions of this chapter or regulations promulgated by the Board; any monetary penalty may be sued for and recovered in the name of the Commonwealth.

B. The Board may impose penalties on persons using the CPA title in Virginia or firms providing attest services, compilation services, or financial statement preparation services to persons or entities located in Virginia for:

1. Violation of the provisions of this chapter or regulations promulgated by the Board.

2. Fraud or deceit in obtaining, renewing, or applying for reinstatement or lifting the suspension of a Virginia license.

3. Revocation, suspension, or refusal to reinstate the license of another state for disciplinary reasons.

4. Revocation or suspension of the privilege of practicing before any state or federal agency or federal court of law.

5. Dishonesty, fraud, or gross negligence in providing services to an employer using the CPA title, in providing services to the public using the CPA title, or in providing attest services, compilation services, or financial statement preparation services.

6. Dishonesty, fraud, or gross negligence in preparing the person's or firm's own state or federal income tax return or financial statement.

7. Conviction of a felony, or of any crime involving moral turpitude, under the laws of the United States, of Virginia, or of any other state if the acts involved would have constituted a crime under the laws of Virginia.

8. Lack of the competence required to provide services to the public using the CPA title for persons and entities located in Virginia or to provide attest services, compilation services, and financial statement preparation services to persons and entities located in Virginia, as determined by the Board.

C. The Board may also impose penalties on:

1. A person who does not hold a Virginia license, or who does not meet the requirements to use the CPA title in Virginia under the substantial equivalency provisions of § 54.1-4411, and commits any of the acts prohibited by § 54.1-4414; or

2. An entity that does not meet the criteria prescribed by subdivision D 1 of § 54.1-4412.1 and commits any of the acts prohibited by § 54.1-4414.

2007, c. 804; 2015, c. 287.

§ 54.1-4413.5. Confidential consent agreements

A. The Board may enter into a confidential consent agreement with a person or firm in lieu of disciplinary action.

B. A confidential consent agreement:

1. Shall be entered into only in cases involving minor violations of the provisions of this chapter or regulations promulgated by the Board;

2. Shall not be disclosed by the person or firm;

3. Shall include findings of fact and may include an admission or a finding of a violation; and

4. Shall not be considered a notice or order of the Board but may be considered by the Board in future disciplinary proceedings.

C. The Board shall adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to implement the provisions of this section. Such regulations shall identify the type of minor violations for which confidential consent orders may be offered and limit the number of confidential consent orders that may be offered to the same licensee in any given period. The Board shall not enter into a confidential consent agreement if there is probable cause to believe a licensee has demonstrated gross negligence or intentional misconduct in the practice of public accounting.

2007, c. 804.

§ 54.1-4414. Prohibited acts

Neither (i) a person who does not hold a Virginia license or who does not meet the requirements to use the CPA title in Virginia under the substantial equivalency provisions of § 54.1-4411 nor (ii) an entity that does not meet the criteria prescribed by subdivision D 1 of § 54.1-4412.1 shall:

1. Practice public accounting;

2. Claim to hold a license to use the CPA title;

3. Make any other claim of licensure, registration, or approval related to the preparation of financial statements that is false or misleading;

4. Use the CPA title; or

5. Refer to any of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3, or refer to or use any of the terminology prescribed by those authorities for reporting on financial statements, in any form or manner of communication about services provided to persons or entities located in Virginia.

2001, c. 832; 2004, c. 602; 2007, c. 804.

§ 54.1-4415. Exemptions from unlawful acts

The unlawful acts listed in § 54.1-4414 shall not apply to a person or entity holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accounting or its equivalent in the country, provided that:

1. The practice of the person or entity in Virginia is limited to providing services to persons or entities who are residents of, governments of, or business entities of the country in which the entitlement is held;

2. The person or entity does not engage in the practice of public accounting for any other person, firm, or governmental unit located in Virginia; and

3. The person or entity designates the country of origin and does not use any title or designation other than the one under which he or the entity may lawfully practice in the country of origin, which may be followed by a translation of the title or designation into English.

2001, c. 832; 2007, c. 804.

§ 54.1-4416. Board's powers with respect to hearings under this chapter

The Board may, in hearings arising under this chapter, determine the place in Virginia where the hearings shall be held; subpoena witnesses; take depositions of witnesses in the manner provided for in civil actions in courts of record; pay the witnesses fees and mileage and other expense reimbursements for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths.

2001, c. 832; 2007, c. 804.

§ 54.1-4417. Repealed

Repealed by Acts 2007, c. 804, cl. 2.

§ 54.1-4418. Recovery of cost after grant of formal fact-finding

After a formal fact-finding under § 2.2-4020 in which a penalty is imposed to fine, or to suspend, revoke or refuse to reinstate or lift the suspension of a Virginia license, the Board may assess the holder or former holder of the license the cost of conducting the fact-finding when the Board has final authority to grant the license, unless the Board determines that the offense was inadvertent or done in a good-faith belief that the act did not violate provisions of this chapter or regulations promulgated by the Board. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer, (ii) the actual cost of recording the proceedings, (iii) a reasonable administrative charge for personnel and other administrative costs incurred by the Board in connection with the hearing, and (iv) a reasonable charge for any consultants retained by the Board.

2001, c. 832; 2007, c. 804.

§ 54.1-4419. Repealed

Repealed by Acts 2007, c. 804, cl. 2.

§ 54.1-4420. Annual audit

The Board's financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives, or by a firm selected by the Board through a competitive procurement.

2001, c. 832; 2007, c. 804.

§ 54.1-4421. Biennial report

The Board shall submit a biennial report 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 : (i) a description of the Board's activities, (ii) a report on the audit of the Board's financial statements for the biennium, (iii) statistical information regarding the administrative hearings and decisions of the Board, and (iv) a general summary of all complaints received against persons and firms and the procedures used to resolve the complaints.

2001, c. 832; 2004, c. 650; 2007, c. 804.

§ 54.1-4422. Expired

Expired.

§ 54.1-4423. Use of consultants in investigations

A. The Board may develop a roster of consultants and may contract with consultants to assist the Board in investigating and evaluating violations of the provisions of this chapter and regulations promulgated by the Board and to provide expert testimony as necessary in any subsequent administrative hearing or court proceeding. The consultants' compensation shall be determined and paid by the Board.

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

2003, c. 291; 2007, c. 804.

§ 54.1-4424. Certain information not to be made public

Tax returns, financial statements, and other financial information that is not generally available to the public through regulatory disclosure or otherwise, subdivision 3 of § 54.1-108 notwithstanding, provided to the Board by a complainant or as a result of an investigation of a licensee by the Board in response to a complaint shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

2012, c. 375.

§ 54.1-4425. Time for filing complaints against CPAs or CPA firms

A. Except as otherwise provided in subsections B and C, any complaint against a CPA or CPA firm for any violation of statutes or regulations pertaining to the Board or any of the programs that may be in another title of the Code for which the Board has enforcement responsibility, in order to be investigated by the Board, shall be made in writing, or otherwise made in accordance with Board procedures, and received by the Board within three years of the act, omission, or occurrence giving rise to the violation. Public information obtained from any source by the Executive Director or agency enforcement staff may serve as the basis for a written complaint against a CPA or CPA firm.

B. However, where a CPA or CPA firm has materially and willfully misrepresented, concealed, or omitted any information and the information so misrepresented, concealed, or omitted is material to the establishment of the violation, the complaint may be made at any time within two years after discovery of the misrepresentation, concealment, or omission.

C. In cases where criminal charges have been filed involving matters that, if found to be true, would also constitute a violation of the regulations or laws of the regulant's profession enforced by the Board, an investigation may be initiated by the Board at any time within two years following the date such criminal charges are filed.

D. Nothing in this section shall be construed to require the filing of a complaint if the alleged violation of the statute or regulation is discovered during an investigation authorized by law, and the acts, omissions, or conditions constituting the alleged violations are witnessed by a sworn investigator appointed by the Executive Director.

E. Nothing herein shall deny the right of any party to bring a civil cause of action in a court of law.

2013, c. 297.