

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 266

An Act to amend and reenact § 54.1-2900 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 29 of Title 54.1 sections numbered 54.1-2957.18 through 54.1-2957.21, relating to genetic counseling; licensure.

[S 330]

Approved March 20, 2014

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2900 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 29 of Title 54.1 sections numbered 54.1-2957.18 through 54.1-2957.21 as follows:

§ 54.1-2900. Definitions.

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

"Acupuncturist" means individuals approved by the Board to practice acupuncture. This is limited to "licensed acupuncturist" which means an individual other than a doctor of medicine, osteopathy, 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.

"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 x-rays 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 care practitioner 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 care practitioner.

"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 who is licensed to perform a comprehensive scope of diagnostic radiologic procedures employing equipment which emits ionizing radiation and (ii) is delegated or exercises responsibility for the operation of radiation-generating equipment, the shielding of patient and staff from unnecessary radiation, the appropriate exposure of radiographs or other procedures which contribute to any significant extent to the site or dosage of ionizing radiation to which a patient is exposed.

"Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist, dental hygienist or 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 which emits ionizing radiation which 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, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under qualified medical direction.

§ 54.1-2957.18. 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.

§ 54.1-2957.19. 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.

§ 54.1-2957.20. 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.

§ 54.1-2957.21. 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.

2. That the initial appointments of nonlegislative citizen members of the Advisory Board of Genetic Counseling shall be staggered as follows: three licensed genetic counselor members appointed for a term of two years; one doctor of medicine or osteopathy member appointed for a term of three years; and one nonlegislative citizen member who has used genetic counseling services appointed for a term of four years. Until the licensure system for genetic counselors is established, 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 shall qualify for appointment as the licensed genetic counselor members.