Requirements Imposed on Hospitals, Other Health Care Institutions and Organizations, and Assisted Living Facilities to Report Disciplinary Actions Against, Allegations of Misconduct by, and Impairment of Certain Health Care Practitioners to The Virginia Department of Health Professions or The Office of Licensure and Certification of The Virginia Department of Health

Guidance Document No. 76-34

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I. Introduction

Since 2003, the Virginia Code has, in some manner, imposed on hospitals and other health care institutions, assisted living facilities, the requirement to report to the Department of Health Professions ("DHP") information concerning disciplinary actions against, misconduct by, and certain disorders of health care practitioners. The purpose of the law is to enhance the ability of DHP to perform prompt, efficient, and thorough investigations of possible misconduct or impairment of regulated health care practitioners. DHP's mission, to ensure safe and competent patient care, is aided by timely and meaningful reports from sources likely to have knowledge of such practitioners' professional misconduct, incompetence, or impairment.

In 2015, the General Assembly amended the law, adding the requirement for licensed and exempt home health organizations and licensed hospice organizations to make similar reports to the Office of Licensure and Certification of the Virginia Department of Health ("OLC").

To provide guidance to health care institutions and organizations, assisted living facilities, health care professionals and the public, the Department of Health Professions adopted Guidance Document No. 76-34, which addresses the requirements to report health professionals' misconduct, incompetence, or impairment to the Virginia Department of Health Professions or Office of Licensure.

A. The reporting requirements in general*:*

1. The chief executive officer ("CEO") and/or the chief of staff ("COS") of every hospital and other health care institution and the administrator of every assisted living facility in the Commonwealth each has a duty, unless prohibited by federal law, to report to the Department of Health Professions the following information regarding any person subject to regulation by a health regulatory board[1]:

a. Any information of which the officer becomes aware in an official capacity, indicating that any person subject to regulation by a health regulatory board is in need of or has been admitted as a patient for treatment of substance abuse or a psychiatric illness that may render the health professional a danger to himself, the public or his patients;

b. Any information of which the official becomes similarly aware, indicating that any person licensed by a health regulatory board may have engaged in "unethical, fraudulent or unprofessional conduct;"

c. Any disciplinary action initiated or taken by the institution as a result of intentional or negligent conduct that causes or is likely to cause injury to a patient; a breach of professional ethics; professional incompetence; moral turpitude; or substance abuse; and

d. Any voluntary resignation from staff of a health professional while such professional is under investigation or the subject of disciplinary proceedings.
Va. Code § 54.1-2400.6.

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[1] Persons subject to being reported under § 54.1-2400.6 are (i) those licensed, certified or registered by a health regulatory board, (ii) any applicant for such licensure, certification or registration, and (iii) those holding a multistate license privilege to practice nursing. Those practitioners include:

Board of Audiology/Speech Language Pathology: audiologists; speech-language pathologists
Board of Counseling: marriage and family therapists; professional counselors; licensed substance abuse treatment practitioners; certified rehabilitation providers; certified substance abuse counselors; certified substance abuse counseling assistants
Board of Dentistry: dentists; oral and maxillofacial surgeons; dental hygienists, Dental assistants II
Board of Funeral Directors and Embalmers: funeral service licensees; funeral directors; funeral embalmers; funeral trainees
Board of Medicine: doctors of medicine, including interns and residents; doctors of osteopathic medicine; chiropractors; podiatrists; physician assistants; radiologic technologists; radiologic technologists, limited; radiologist assistants; respiratory therapists; occupational therapists; occupational therapy assistants; acupuncturists; licensed athletic trainers; licensed midwives; polysomnographers; licensed behavioral analysts; licensed assistant behavioral analysts
Board of Nursing: registered nurses; licensed practical nurses; nurse practitioners; clinical nurse specialists; certified massage therapists; certified nurse aides; advanced certified nurse aides; registered medication aides
Board of Long Term Care Administrators: nursing home administrators; assisted living facility administrators; administrators-in-training
Board of Optometry: optometrists
Board of Pharmacy: pharmacists; pharmacist interns; pharmacy technicians
Board of Physical Therapy: physical therapists; physical therapist assistants
Board of Psychology: applied psychologists; clinical psychologists; school psychologists; certified sex offender treatment providers
Board of Social Work: clinical social workers; social workers
Board of Veterinary Medicine: veterinarians; veterinary technicians; equine dental technicians

2. The director of every licensed home health or hospice organization or of every accredited home health organization that is exempt from licensure each has the duty, unless prohibited by federal law, to report to the Office of Licensure and Certification of the Department of Health ("OLC") the same information regarding any person subject to regulation by a health regulatory board, in the same manner.

3. The required reports are to be made in writing to the Director of DHP or the OLC within a specified 30-day period (one exception is that a report concerning the commitment or admission of a health care professional as a patient shall be made within **five** days of such information becoming known to the officer). Each report shall describe fully the circumstances giving rise to the report, identify persons with knowledge of the relevant facts, and include relevant medical records. Institutions shall not be required, however, to submit "proceedings, minutes, records or reports that are privileged under § 8.01-581.17," which pertains to peer review proceedings.

B. Penalties for failing to report

Any person who fails to make a report as required by § 54.1-2400.6 shall be subject to a civil penalty of up to $25,000, as determined by the Director of DHP.

C. Immunity from liability

Any person who makes a report in good faith regarding the conduct or competence of a health care practitioner as required by law or regulation, or who provides information in connection with an investigation or judicial or administrative proceeding, shall be immune from any civil liability for making such report or providing such information.

II. Specific Directions and Guidance Concerning Certain Required Reports

A. What is meant by "hospital, other health care institution, or assisted living facility"?

For the purpose of reporting requirements, "hospital, other health care institutions or assisted living facilities" should be taken to mean:

1. General hospitals;
2. Outpatient surgical hospitals;
3. Mental or psychiatric hospitals, including, for the purposes of Va. Code § 54.1-2400.6, every facility and training center operated by the Virginia Department of Behavioral Health and Developmental Services;
4. Hospitals operated by the University of Virginia and Virginia Commonwealth University;
5. Hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums, acute, rehabilitation, chronic disease, short-term, long-term, and inpatient or outpatient maternity hospitals;
6. Nursing homes and certified nursing facilities; and

7. Assisted living facilities licensed by the Department of Social Services.

For these purposes, physician offices and group medical practices are not intended to be included in the terms, "hospital and other health care institution."

B. What is meant by "home health organization"?

For the purpose of reporting requirements, "home health organization" should be taken to mean a public or private organization, whether operated for profit or not for profit, that provides, at the residence of a patient or individual in the Commonwealth of Virginia, one or more of the following services:

1. Home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions;

2. Personal care services, including assistance in personal care to include activities of daily living provided in an individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury or disabling condition; or

3. Pharmaceutical services, including services provided in a patient's residence, which include the dispensing and administration of a drug or drugs, and parenteral nutritional support, associated patient instruction, and such other services as identified by the Board of Health by regulation.

"Residence" may be, in addition to a person's own home or the home of a relative, an assisted living facility, but does not include a hospital, nursing facility or nursing home or other extended care facility. *See Va. Code § 32.1-162.7*

C. What is meant by "hospice organization"?

For the purpose of reporting requirements, "hospice organization" should be taken to mean an administrative group, individual or legal entity that has a distinct organizational structure, accountable to the governing authority directly or through a chief executive officer, that administers a coordinated program of home and inpatient care providing palliative and supportive medical and other health services to terminally ill patients and their families. *See Va. Code § 32.1-162.1*

D. Who must be reported?

Under Va. Code § 54.1-2400.6, reports are to be made regarding practitioners subject to regulation by any of the health regulatory boards, specifically:

1. Any person licensed, certified, or registered by a health regulatory board,
2. Any applicant for licensure, certification or registration, and

3. Any person holding a multistate licensure privilege to practice nursing under the interstate Nurse Licensure Compact, effective January 1, 2005.

E. What must be reported?

Reporting is required any time that a CEO, COS, ALF administrator or home health or hospice director becomes aware in their official capacity that:

1. A practitioner regulated by any health regulatory board is in need of treatment for substance abuse, or a psychiatric illness that may render such health professional a danger to himself, the public or his patients. *Va. Code § 54.1-2400.6(A)(1)*

2. A practitioner regulated by any health regulatory board has been committed or admitted as a patient for the treatment of substance abuse or a psychiatric illness that may render such health professional a danger to himself, the public or his patients. *Va. Code § 54.1-24--.6(A)(1)*

3.There is a reasonable probability that a practitioner regulated by any health regulatory board may have engaged in unethical, fraudulent or unprofessional conduct, as defined in the relevant licensing statutes and regulations. In some cases, a "reasonable investigation and consultation . . . with appropriate internal disciplinary boards or committees authorized to impose disciplinary action" may be needed to ascertain existence of such "reasonable probability." *Va. Code § 54.1-2400.6(A)(2)*

4. Any disciplinary proceeding is begun against a practitioner regulated by any health regulatory board as a result of conduct involving intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, a breach of professional ethics, professional incompetence, moral turpitude, or substance abuse. *Va. Code § 54.1-2400.6(A)(3)*

5. Any disciplinary action is taken against a practitioner regulated by any health regulatory board during or after disciplinary proceedings, or during an investigation, as a result of conduct involving intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, a breach of professional ethics, professional incompetence, moral turpitude, or substance abuse. *Va. Code § 54.1-2400.6(A)(4)*

6.Any health professional voluntarily resigns from the staff of a hospital, other health care institution or assisted living facility, or accepts a voluntary restriction or expiration of privileges at the institution, while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution 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. *Va. Code § 54.1-2400.6(A)(5)*

F. What is meant by "official capacity"?

Information of which a CEO, COS, ALF administrator or home health or hospice director becomes aware "in his official capacity" should be taken to mean any information imparted to or received by the CEO, COS, administrator or director while s/he is engaged in their official duties or by virtue of their position. For example, if information about an impaired practitioner is provided to a COS while on duty at work or, if not while on duty at work but, rather, because the COS holds a management role at his/her respective institution, the COS will have a duty to report. Furthermore, if a CEO, administrator or director observes or receives credible information while attending a social event that causes her to conclude that a practitioner on her organization's staff is in need of treatment for substance abuse, the CEO, administrator or director has a duty to report that information, regardless of where she was when it came to her attention, because of her general supervisory responsibility over her staff.

G. What is meant by "reasonable probability"?

For the purpose of reporting health professional misconduct, a "reasonable probability" should be taken to mean a likelihood greater than a mere possibility. The statute does not presume, nor does it entitle, an institution to undertake an extensive or protracted investigation in each instance to determine whether a "reasonable probability" exists that a health professional engaged in misconduct. In many cases, the CEO, COS or Administrator will obtain information of sufficient credibility such that no internal "investigation" or additional "consultation" will be required. In other cases and in certain institutions, the CEO, COS or Administrator may be justified in utilizing the institution's peer review process to establish that there is a reasonable probability to conclude that a practitioner may have engaged in misconduct. In such instances, if the peer review committee concludes it is warranted to proceed, then the CEO, COS or Administrator will have cause to report the reasonable probability of misconduct to DHP even before any proceedings are conducted by the hospital or facility.

H. What specific information is required in reports?

Reports shall be in writing and shall include:

1. The name and address of the person who is the subject of the report;
2. A full description of the circumstances required to be reported;
3. Names and contact information of individuals with knowledge about the facts required to be reported;
4. Names and contact information of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported;
5. All relevant medical records if patient care or the health professional's health status is at issue; and
6. If relevant, notice to the Board 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. Va. Code § 54.1-2400.6(A)*

I. When must reports be made?

1. Generally, reports must be made **within 30 days** of any of these triggering events:

a. The date a CEO, COS, administrator or director becomes aware that a practitioner regulated by any health regulatory board is in need of treatment for substance abuse, or a psychiatric illness that may render such health professional a danger to himself, the public or his patients,

b. The date a CEO, COS, or administrator or director determines that there is a reasonable probability that a practitioner regulated by any health regulatory board may have engaged in unethical, fraudulent or unprofessional conduct, as defined in the relevant licensing statutes and regulations.

c. The date of written communication to a practitioner notifying him of a disciplinary proceeding for reportable conduct.

d. The date of written communication to a practitioner notifying him of a disciplinary action for reportable conduct.

e. The date of a practitioner's resignation, restriction or expiration of privileges while under investigation or subject to disciplinary proceedings for reportable conduct.

2. Reports must be made **within 5 calendar days** when any practitioner regulated by any health regulatory board has been committed or admitted as a patient for the treatment of substance abuse or a psychiatric illness that may render such health professional a danger to himself, the public or his patients. *Va. Code § 54.1-2400.6(B)*

J. To whom must reports be made?

1. Reports by hospital CEOs and COS and ALF administrators should be made to the Director of the Virginia Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233.
2. Reports by home health and hospice organizations should be made to the Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Henrico, Virginia 23233.

K. What information should not or need not be reported or disclosed?

1. Medical records or information learned or maintained about a practitioner in connection with an alcohol or drug prevention function that is conducted, regulated, or directly or indirectly assisted by any federal department or agency if reporting would violate 42 U.S.C. § 290dd-2 or related regulations. *Va. Code § 54.1-2400.6(E)*

2. Privileged information: hospitals, other health care institutions and assisted living facilities are not required to submit any "proceedings, minutes, records, or reports" that are privileged under Va. Code § 8.01-581.17. The provisions of that section shall not, however, bar the making of a report as required by § 54.1-2400.6, nor the production of any requested medical records necessary to investigate unprofessional conduct by any licensed health practitioner. *Va. Code § 54.1-2400.6(A)*

3. When a required reporter has actual notice that the report has already been made, another such report is not required. *Va. Code § 54.1-2400.6(A)* It is strongly recommended, however, that such "actual notice" amount to personal, first-hand knowledge, such as possessing a copy of the written report to DHP or OLC, or having been contacted by an investigator or other DHP or OLC staff about the matter following the agency's report from a third party. Note: A report to the National Practitioner Data Bank does not constitute "actual notice" to DHP or OLC.

III. Specific Provisions of Virginia Law Relating to Reporting, Penalties, and Immunity.

The key statutes that set forth the requirements to report misconduct and incompetence of health care practitioners and immunity for reporting are as follows:

A. Reporting Statutes

Va. Code § 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 licensure 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.

Va. Code § 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.

§ 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.

Va. Code § 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.

B. Penalty Provisions Relating to the Reporting Laws

Va. Code § 32.1-125.01. Failing to report; penalty.
Any hospital or nursing home that has not paid civil penalties assessed for failing to report pursuant to Va. Code § 54.1-2400.6 shall not be issued a license or certification or a renewal of such.

Va. Code § 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: • • •
7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation. • • •
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.

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.

Va. Code § 54.1-2505. Powers and duties of Director of Department.

• • •

The Director of the Department shall have the following powers and duties: • • •

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.

IV. Board-Specific Guidance Regarding Reportable Actions and Conduct

The following Appendices, designated A through M, present information pertinent to reporting the actions and conduct of health care practitioners licensed, registered, or certified by various health regulatory boards. The information includes the statutes and regulations that constitute the grounds for disciplinary action by each board, the provisions of law that are most often cited as a basis for board action, and examples of both reportable and non-reportable conduct. All laws and regulations applicable to the various health regulatory boards and to the practitioners regulated by each board may be found on the DHP website: www.dhp.virginia.gov.

The information provided with regard to each board is intended simply as a guide for hospitals, other health care institutions, assisted living facilities and practitioners that are required by law to make reports to the Department of Health Professions, the Office of Licensure and Certification, the Boards of Medicine and Dentistry. It is not possible to anticipate and address every scenario that could occur and every type of report that a CEO, COS, ALF administrator, home health or hospice director, or other practitioner could be obligated to make. Each institution and each practitioner may, and indeed should, seek the advice of counsel if in doubt about an obligation to report information.

APPENDIX A

Board of Audiology and Speech-Language Pathology

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 54.1-2603. License required

18 VAC 30-20-45. Required licenses
18 VAC 30-20-230. Prohibited conduct
18 VAC 30-20-240. Supervisory responsibilities; supervision of unlicensed assistants
18 VAC 30-20-280. Unprofessional conduct
18 VAC 30-20-300. Continued competency requirements for renewal of active license

B. Examples of Reportable Conduct.

1. Three-year old child only grunts and does not form words with his mouth. The parents seek an evaluation at a local children's hospital. After the initial evaluation, the speech-language pathologist guarantees the complete enunciation of all phonetic sounds by the child at the end of five treatments. 18 VAC 30-20-280

2. A speech-language pathologist allows unlicensed staff to provide testing and treatment of a stroke patient in a nursing home. There is no supervision or initial evaluation by the licensed speech-language pathologist. 18 VAC 30-20-280 (15.)

3. An audiologist contracts with a nursing home to fit and sell hearing aids. He does not hold a hearing specialist license. 18 VAC 30-20-280 (14) and § 54.1-2601.5.

4. A child is referred to an audiologist for extensive hearing testing. The child is found to be profoundly hearing-impaired. The audiologist believes that there is an obstruction in the ear canal and begins to remove wax from the ear (cerumen management). During the procedure, the eardrum is punctured. 18 VAC 30-20-280 (7) and 54.1-2600.

5. A speech-language pathologist allows an unlicensed assistant to bill for his services and the speech-language pathologist signs the treatment plan without ever seeing the patient. 18 VAC 30-20-280(13) and/or (15).

C. Examples of Non-Reportable conduct

1. A hearing aid specialist provides audiological testing and prescribes cochlear implants (Hearing aid specialists are licensed and regulated by a different board).

2. A speech-language pathologist in a hospital provides the initial audiological screening for a delayed language patient. He refers the patient to an audiologist.

3. A patient in a hospital is referred to a speech-language pathologist for evaluation and enhancement of verbal communication skills. There is no improvement in skills after six weeks of treatment. Also, the patient is severely mentally retarded.

4. An autistic child is referred to a speech-language pathologist for treatment in a clinic. The child is unable to concentrate and is constantly moving. Treatment cannot be provided. The child's parents see no improvement in the communication skills of the child.

APPENDIX B

Board of Counseling

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 54.1-2400.1 -- Mental health service providers; duty to protect third parties; immunity.
Va. Code § 54.1-2400.4 -- Mental health service providers duty to inform; immunity; civil penalty.
Va. Code § 54.1-2403.3 -- Medical records; ownership; provision of copies.
Va. Code § 54.1-2406 -- Treatment records of practitioners.
Va. Code § 54.1-2400.7 -- Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.
Va. Code § 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

18 VAC 115-20-130 – Standards of practice (Professional Counseling)
18 VAC 115-50-110 – Standards of practice (Marriage and Family Therapy)
18 VAC 115-30-140 – Standards of practice (Certified Substance Abuse Counselors)
18 VAC 115-60-130 – Standards of practice (Licensed Substance Abuse Treatment Practitioners)
18 VAC 115-40-40 – Standards of practice (Certified Rehabilitation Provider)

B. Examples of Reportable Conduct

1. Failure to report known or suspected child abuse. Va. Code § 63.2-1509.

2. Boundary violations, which may include entering into a business relationship with a client, bartering for services in lieu of payment for services, or developing a social relationship with a client. 18VAC115-20-130.D.1.

3. Engaging in a romantic or sexual relationship with a client or former client, spouse or relative of a client. 18VAC115-20-130.D.2.

4. Failure to create or maintain therapy records. 18VAC115-20-130.C.1-5.

5. Failure to maintain the confidentiality of the therapeutic relationship. 18 VAC 115-20-130.C.3.

C. Examples of Non-Reportable Conduct

1. Billing for frequent or excessive returned phone calls to the client.

2. Charging for last minute cancellations for scheduled appointments.

3. Providing pertinent clinical information and diagnoses to third party payers.

4. Termination of the therapeutic relationship when it is no longer helpful or referring the client to another therapist.

5. Confronting a client about inappropriate behavior.

6. “Treating my child without my permission” (when one parent takes the child to a therapist and the other parent did not give “their permission”).

APPENDIX C

Board of Dentistry

A. Statutory and Regulatory Bases for Disciplinary Action

Va. Code § 54.1-2706 – Revocation or suspension; other sanctions (prohibited conduct)
Va. Code § 54.1-2709.3 - Reports of disciplinary action against oral and maxillofacial surgeons
18 VAC 60-20-50 – Requirements for continuing education
18 VAC 60-20-170 – Acts constituting unprofessional conduct

B. Examples of Reportable Conduct.

1. Use of alcohol or drugs to the extent that such use renders him or her unsafe to practice dentistry or dental hygiene. Va. Code § 54.1-2706(3)(5)(11).

2. Mental or physical incompetence to practice his profession with safety to his patients and the public, such as tremors or untreated and/or unmonitored mental health diagnosis. Va. Code § 54.1-2706(5)(8)(11).

3. Fraudulently obtaining controlled substances for personal use; prescribing medication without a bona fide doctor/patient relationship or prescribing medications for treatment of conditions outside the scope of the practice of dentistry. Va. Code § 54.1-2706(15).

4. Practicing outside the scope of the dentist's or dental hygienist's education, training and experience, such as, undertaking complex orthodontic treatment without training in orthodontics or injecting Botox or other fillers for treatment of facial wrinkles without holding the appropriate certification. Va. Code § 54.1-2706(12).

5. Billing for treatment not provided or failing to abide by the terms of an insurance company's provider agreement/contract. Va. Code §54.1-2706(4).

6. Allowing an unlicensed individual to perform duties that are considered non-delegable. Va. Code §54.1-2706(9) and 18 VAC 60-20-190.

7. Administering or allowing individuals without the proper permit to administer sedation or general anesthesia. Va. Code § 54.1-2706(5)(11) and 18 VAC 60-20-110(A) and (E) and 18 VAC 60-20-120(A) and (E).

8. Placing a crown on a tooth where there is inadequate support due to severe bone loss; failing to take radiographs when needed to evaluate treatment outcomes; failing to correct bridgework with leaking margins; failing to provide for emergency care of patients; or failing to update a patient's health history. Va. Code § 54.1-2706(5)(11).

9. Failure to maintain properly sterilized dental equipment and instruments. Va. Code § 54.1-2706(5)(11).

C. Examples of Non-Reportable Conduct

1. Objection to the amount charged by a dentist.

2. Discrepancies between dental insurance coverage and the treatment provided by a non- participating dentist.

APPENDIX D

Board of Funeral Directors and Embalmers

A. Statutory and Regulatory Bases for Disciplinary Action

Va. Code § 54.1-2800. Definitions.
Va. Code § 54.1-2805. Engaging in the practice of funeral services without a license.
Va. Code § 54.1-2806. Refusal, suspension or revocation
Va. Code § 54.1-2810. Licensure of funeral establishments
Va. Code § 54.1-2820. Requirements of pre-need contracts
18 VAC 65-20-170. Establishment license requirements
18 VAC 65-20-171. Manager of Record responsibilities
18 VAC 65-20-500. Unprofessional conduct
18 VAC 65-30-70. Preneed record keeping
18 VAC 65-30-80. Content of preneed contract
18 VAC 65-30-90. Preneed contract disclosures
18 VAC 65-40-130 Funeral service internship
18 VAC 65-40-340 Supervisors responsibilities
18 VAC 65-40-640 Refusal, suspension or revocation

B. Examples of Reportable conduct.

1. A funeral director is impaired or shows signs of impairment while conducting a funeral service. 18VAC65-20-500 (6) and §54.1-2806 (9)

2. A funeral director acting as a manager of record of a funeral home is impaired or showing signs of impairment during scheduled working hours. 18VAC65-20-500 (6) and §54.1-2806 (9)

3. A funeral director allows someone who is not licensed to perform funeral home duties (aiding and abetting unlicensed activity), 54.1-2806 (10)

4. A funeral director charges fees for services not agreed upon by the consumer. 54.1-2806 (2) (17) (19)

5. A funeral director fails to obtain authorization and/or identification before having a body cremated. 54.1-2818.1

6. A funeral director does not appropriately deposit preneed funds. 54.1-2820, 54.1-2822, 18VAC65-30-120

7. A funeral home does not ensure adequate storage of dead human bodies. Storing bodies uncovered on cardboard boxes in a hallway of the establishment. 18VAC65-20-500-4

8. A funeral director tells a family if they purchase a higher priced casket, it will stop the decomposition process of their loved one. 18VAC65-20-500-3.C(1)

9. A family requests for a funeral establishment to release the body of their loved one and the funeral home refuses to do so. § 54.1-2806-14

C. Examples of Non Reportable Conduct

1. The air conditioning in the funeral home was broken the day of the funeral.

2. The father of his deceased adult daughter makes arrangements and authorizes embalming.

3. A funeral director charges the fees documented in the General Price List, even if the consumer believes the fees are too high.

4. Mistakes were made on the death certificate but there was no malicious intent by the funeral director.

APPENDIX E

Board of Long-Term Care Administrators

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 54.1-3103. Supervision by a Licensed Administrator
18 VAC 95-20-470. Unprofessional Conduct
18 VAC 95-30-210. Unprofessional Conduct

B. Examples of Reportable Conduct

1. A pattern of harmful or potentially harmful conditions relating to patient care, in apparent violation of federal, state, or local laws that govern long-term care facilities. 18 VAC 95-20-470 and 18 VAC 95-30-210. It is worthwhile to note that, pursuant to Va. Code § 54.1-2400.6.C, the State Health Commissioner or the Commissioner of the Department of Social Services must report to the Department any information of which their agencies may become aware in the course of their duties that a health professional in a nursing home or an assisted living facility may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

2. Verified complaints, whether raised by staff, residents, or family members, of needed care not being provided to residents. 18 VAC 95-20-470; 18 VAC 95-30-210

3. Reports of suspected impairment or use of drugs or alcohol by an administrator while at the facility. 18 VAC 95-20-470; 18 VAC 95-30-210

4. Allowing unregistered medication aides to pass and administer medications in an Assisted Living Facility. 18VAC95-30-210

5. Failing to report abuse or neglect of residents the next business day. 18 VAC 95-20-470(1)

6. Diversion and/or adulteration of drugs. 18 VAC 95-30-210(1)

7. Failing to report to OLC, DSS, and/or Adult Protective Services as required by their respective regulations. 18VAC95-30-210 (2) and 18VAC95-20-470 (2)

8. Entering into a personal financial relationship with consumers or their families. 18VAC95-30-120 (1) and 18VAC95-20-470 (1)

9. Misappropriation of consumer related property or funds. 18VAC95-30-120 (1) and 18VAC95-20-470 (1).

10. Conviction of a "barrier crime" as defined in § 63.2-1719 and 63.2-1720 of the Code of Virginia. 18VAC95-30-210 (2) and 18VAC95-20-470 (2)

C. Examples of Non-Reportable Conduct

1. Accidents or incidents if appropriate policies were followed.

2. Termination of services to a resident in accordance with policies.

APPENDIX F

Board of Medicine

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 54.1-2915 – Unprofessional conduct.

18 VAC 85-20-25 – Treating and prescribing for self or family.
18 VAC 85-20-26 -- Patient records.
18 VAC 85-20-27 -- Confidentiality
18 VAC 85-20-28 – Practitioner-patient communication; termination of relationship.
18 VAC 85-20-29 – Practitioner responsibility.
18 VAC 85-20-30 -- Advertising ethics.
18 VAC 85-20-40 -- Vitamins, minerals and food supplements.
18 VAC 85-20-50 -- Anabolic steroids
18 VAC 85-20-80 -- Solicitation or remuneration in exchange for referral
18 VAC 85-20-90 -- Pharmacotherapy for weight loss
18 VAC 85-20-100 -- Sexual contact.
18 VAC 85-20-105 -- Refusal to provide information.
18 VAC 85-20-280 – 85-20-300 – Practitioner Profile System.
18 VAC 85-20-310 – 85-20-390 – Office Based Anesthesia.
18 VAC 85-20-400 – 85-20-420 – Mixing, Diluting or Reconstituting of Drugs for Administration.

B. Examples of Reportable Conduct

1. Nursing staff and colleagues observe that a physician is slurring his words and making uncharacteristic comments during rounds. One nurse thought he smelled alcohol on the physician's breath. Two patients reported the same. The Administrator of the hospital was notified and following her review and investigation of the matter, reported the incident as possible impairment to the Board of Medicine. Va. Code § 54.1-2915(A)(14)

2. The Medical Staff office receives a call from an attorney in another state who says he is suing a physician on staff for her care in a case at her previous practice in the other state. During the call the attorney indicates that the physician does not have a credential that the Medical Staff knows her to have claimed during initial credentialing. After confirmation, the allegation appears to be true. The Chief of the Medical Staff reported the matter to the Board of Medicine as a fraudulent claim by the physician. Va. Code § 54.1-2915(A) (1)

3. A patient of Doctor X was admitted through the emergency department with myocardial ischemia. Dr. X gave telephone orders to admit the patient, which the nurses dutifully followed. However, in the next 24 hours, Dr. X did not round on the patient and could not be reached by phone or pager. The nursing staff had no alternative but to inform the Chief of the Medical Staff, who arranged for the patient's care with another doctor. This dangerous neglect of this patient was deemed serious, and potentially life-threatening, and in the best

judgment of the Chief of Staff, required reporting to the Board of Medicine. Va. Code § 54.1-2915(A)(3) (negligent conduct); and § 54.1-2915(A)(13) (dangerous practice).

4. Despite precautionary comments from the Chief Surgical Nurse and several other staff in the OR about a pre-op patient's fluctuating vital signs, the surgeon angrily ordered the team to press on and begin the procedure. Twenty minutes into the case, the patient became bradycardic, hypotensive, arrested and died on the table. Review of this matter showed that the physician's intentional disregard of the patient's pre-op condition breached the standard of care, whereupon the Administrator made a report to the Board of Medicine. Va. Code § 54.1-2915(A)(3) (intentional or negligent conduct); see also § 54.1-2915(A)(13) (dangerous practice).

5. Administrator learns that one of the physicians on staff is utilizing unlicensed individuals to perform x-rays in his office. Va. Code § 54.1-2915(A)(11).

6. Dr. X, a family practitioner, treats Patient A. Dr. X does not have admission privileges, but his partner, Dr. Y, admits Patient A to the hospital during an acute episode of illness. Patient A informs the nursing staff that she is involved in a sexual relationship with Dr. X. The Director of Nursing takes the matter to the Administrator, who deems a report to the Board of Medicine to be warranted. Va. Code § 54.1-2915(A)(19) & 18 VAC 85-20-100.

7. The hospital pharmacist informs the Administrator that it appears that Dr. X wrote a prescription in the name of Patient A that was then given to Patient B, her sister. During investigation of this matter, Dr. X admitted to the writing of a fraudulent prescription, albeit with altruistic intent, in the name of one of his patients, whose sister was indigent and unable to afford medication. Va. Code § 54.1-2915(A)(17).

8. A physician places an ad in the metropolitan newspaper that says his services with a questionable new technology are the best around and guarantees a result superior to those of conventional approaches. He is reported to the Board for claims of superiority and possible misleading advertising in accordance with Section 54.1-2915(A)(15) of the Code of Virginia and 18 VAC 85-20-30.

C. Examples of Non-Reportable Conduct

1. The Director of Health Information Systems notified Dr. X that he was delinquent in his discharge summary dictations and would have his admission privileges suspended until they were completed. Dr. X completed his medical records in less than 30 days and was taken off the suspension list.

2. At re-credentialing time, Dr. X cannot provide the Medical Staff office with the required number of hours of CME. She is placed on probationary status until such time as she can provide evidence of completing the required number of hours. Dr. X does so in less than 30 days and her probation is terminated.

3. Dr. X is on call for his group Saturday night, but when called by the Emergency Department, his wife tells them that he is not feeling well and to call his partner who is on second call. The partner responds. On Monday morning, Dr. X confides in the Chief of Staff that he has diabetes, was experiencing an elevated blood sugar, and was very sorry for his inability to respond. He provides information from his treating physician and assures the Chief of Staff that he would do everything to prevent his physical illness from interfering with his patient care responsibilities in the future.

4. Dr. X is discourteous to nurses and patients alike. Her medical care is not in question. Occasionally the Administrator gets complaints from patients about Dr. X's "bedside manner." Although her personal style lacks gentility, she is not reported to the Board of Medicine.

5. Dr. X is the subject of a newspaper report after his arrest for DUI on a Saturday night. The Administrator and Chief of Staff investigate this matter and determine that this DUI was an isolated incident, did not occur when the physician was on call, was not indicative of an ongoing problem of substance abuse or impairment, and, accordingly, do not report to the Board of Medicine.

6. It is recommended to hospitalized patient that he be seen by Dr. X, a specialist. Patient calls doctor's office and asks whether Dr. X participates in Acme Insurance Company's preferred provider organization. Receptionist answers, "Yes, I think he does." Attending staff physician arranges for patient to be seen by Dr. X; patient subsequently receives a bill for services and discovers that Dr. X does not, in fact, participate with the insurer. Complaint is made to hospital administrator, who is aware of no other such complaints regarding the physician and does not make a report to the Board of Medicine.

APPENDIX G

Board of Nursing

A. Statutory and Regulatory Bases for Disciplinary Action

Va. Code § 54.1-3007 – Refusal, revocation or suspension, censure or probation
Va. Code § 54.1-3008 – Particular violations; prosecution

18 VAC 90-20-300 – Disciplinary provisions (RNs, LPNs)
18 VAC 90-30-220 – Grounds for disciplinary action against the license of a licensed nurse practitioner
18 VAC 90-40-130 – Grounds for disciplinary action (prescriptive authority of licensed nurse practitioners)
18 VAC 90-25-100 – Disciplinary provisions (C.N.A.s)
18VAC90-60-120-Disciplinary provisions (RMAs)
18VAC90-50-90-Disciplinary provisions (CMTs)

B. Examples of Reportable Conduct

1. For Nurses Licensed in Virginia or Practicing in Virginia under a Multistate Privilege.
A nurse engaged in an inappropriate and unprofessional relationship with a psychiatric patient with whom she visited on her days off and arranged to go with on a vacation. On other occasions she regularly hugged and kissed this patient during the course of her care. Va. Code § 54.1-3007(2), unprofessional conduct.

The nurse initiated treatment of a decubitus ulcer that was a change in the patient's condition and did not inform the physician for 5 days. 18 VAC 90-20-300(A)(2)(a), unprofessional conduct.
The nurse obtained IV fluids, needles and supplies from the hospital emergency room to use to treat a family member who was receiving home care. Va. Code § 54.1-3007(2); 18 VAC 90-20-300(A)(2)(c)

The nurse failed to include employment with X and Y hospitals, her two most recent nursing employments, on her application for employment as requested in the employment history section of the application. Va. Code § 54.1-3007(2); 18 VAC 90-20-300(A)(2)(e).

The nurse left her assigned patients in the middle of her shift and did not return, without reporting she was leaving to her supervisor or other nursing staff. Va. Code § 54.1-3007(2); 18 VAC 90-20-300(A)(2)(f)

On x date, in Z court, the nurse was convicted of grand larceny, a felony. Va. Code § 54.1-3007(4).
The nurse failed to complete ordered treatments on several patients. However, she documented on the treatment record that these things were done. Va. Code § 54.1-3007(5).

The nurse was noted on duty to have slurred speech, unsteady gait, and alcohol on her breath. A drug screen was ordered for cause, which yielded positive results for alcohol and opiates. Va. Code § 54.1-3007(6).

The license of Nurse X was placed on probation with terms for 3 years by the Colorado Board of Nursing on x date. Va. Code § 54.1-3007(7).

The nurse inappropriately responded to a patient by using profanity and racial slurs when the patient was uncooperative with care being delivered. Va. Code § 54.1-3007(8).

The nurse failed to renew her license to practice as a R.N., which expired on X date. She continued to practice for 12 months without a valid license to practice nursing in Virginia. Va. Code § 54.1-3008(2).

The Nurse transferred a patient from the ICU to the medical floor and improperly documented that she had obtained orders from the Physician for intravenous fluids and medications when in fact she had not talked to the physician when she wrote these orders. Va Code 54.1- 3007 (2) &(5), 54.1-3008, 18 VAC 90-20-300 A 2 (a) (e).

The Nurse communicated through a social network information about a patient for whom she had provided care. Va Code 54.1-3007 (2) & (5) , 18 VAC 90-20-300 A 2 (m).

The Nurse accessed the medical record of a coworker who was a patient at the facility in which she worked and further verbally shared information with coworkers in other units of the hospital. . The nurse was not assigned to this patient. Va Code 54.1-3007 (2) & (5) , 18 VAC 90-20-300 A 2 (m).

2. For Licensed Nurse Practitioners

The nurse's R.N. license to practice in Maryland was suspended on x date. 18 VAC 90-30-220(1).

The L.N.P. provided care to a high risk obstetrical patient without collaborating with her patient care team physician as required by her written or electronic protocol. 18 VAC 90-30-220(3).

During a surgical procedure, the C.R.N.A. was noted to have slurred speech, to be dozing, and did not adequately monitor the patient's vital signs. An audit of the medication revealed excessive amounts of anesthetic agents signed out without corresponding documentation of administration to the patient. 18 VAC 90-30-220(5).

3. For Licensed Nurse Practitioners With Prescriptive Authority

Review of patient records revealed the L.N.P. prescribed steroid medication for patients on several occasions which were not authorized by her practice agreement with the patient care team physician. 18 VAC 90-40-130 (1),

4. For Certified Nurse Aides:

C.N.A. applicant marked "no" to the question inquiring had she ever had past action in another jurisdiction on her initial application for certification by endorsement submitted in 2000, when she was placed on the abuse registry by the state of West Virginia in 1998. Va. Code § 54.1-3007(1), 18 VAC 90-25-100 (1) (b).

During the course of her employment at X nursing home, the C.N.A. took insulin syringes from the facility stock without permission for use by a diabetic family member. Va. Code § 54.1-3007(2), 18 VAC 90-25-100(2) (c).

During the course of providing care to a patient in her home, the C.N.A. documented that she worked 6 hours on x date. However, according to the patient she was only in the home for 2 hours on that date. Va. Code § 54.1-3007(2); 18 VAC 90-25-100 (2) (d).

On x date, in Z court, the C.N.A. was convicted of shoplifting, a misdemeanor. Va. Code § 54.1-3007(4).

In response to a resident's repetitive requests for assistance, the C.N.A. removed the residents call bell from his reach. Va. Code § 54.1-3007(5).

While on duty, the C.N.A. was noted to smell of alcohol and was slow to respond to call bells. A subsequent for cause drug screen was positive for alcohol. Va. Code § 54.1-3007(6).

The C.N.A. restrained an elderly combative resident who was resisting care by tying him to the side rails with a sheet at the beginning of her shift. The C.N.A. forgot to remove the restraints and they remained in place the entire 8 hour shift. Va. Code § 54.1-3007(8).

During the course of providing care in the resident's home, the CNA made personal long distance phone calls at the resident's expense totaling $76. Va. Code § 54.1-3007 (8).

5. For Registered Medication Aides:

RMA applicant answered no to the question concerning previous convictions on her initial application for registration in 2011, when she actually had misdemeanor conviction for possession of cocaine in 2009. Virginia Code 54.1-3007 (1) and 18 VAC 90-60-120(1)(B)

RMA, who was also a C.N.A, restrained a resident and forced the resident to take the medications. Bruising was noted on the resident's arm and face. Resident spit the medication out, but the RMA charted them as given. Va. Code § 54.1-3007(2) (5) (8); 18VAC90-60-120 (2) (d) (f) (l); and, 18VAC90-25-100 (2) (e).

RMA was witnessed by another RMA and another resident going into a resident's purse and taking out money and putting it in her pocket. RMA denies stealing the money. RMA states

the resident agreed to loan her the money. RMA states this resident gives her money and loans all the time. They are friends. Va. Code § 54.1-3007(2) (5) (8); 18VAC90-60-120 (2) (h), (i) (j).

RMA took a picture of a resident in a compromising position and sent the picture via email to another RMA. The second RMA then posted the picture on her website. . Va. Code § 54.1-3007(2) (5) (8); 18VAC90-60-120 (2) (j) (k).

RMA was admitted to the hospital because of behaviors that seems to present a danger to herself and to others. She was treated for bipolar disorder and placed on medications that seem to control the behavior. Her treating physician has deemed her safe and competent to practice. Va. Code § 54.1-3007(6).

RMA mixed up two residents' medication and gave Resident A's medication to Resident B. The RMA caught the error prior to administering Resident B's medication to Resident A and documented the incidents accurately in the record. Resident B had to be hospitalized for adverse reaction to the medication received that was not prescribed. Va. Code § 54.1-3007(2),(5)and(8); and 18VAC90-60-120(2)(l);

6. <u>For Licensed Massage Therapist (LMT):</u>

While providing a massage to a client, the LMT touched the client inappropriately and made verbal suggestions to the client concerning the satisfaction of sexual needs for the client. Va. Code § 54.1-3007(2) (5) (8); 18VAC90-50-90 (2) (d) (i).

LMT owns a spa and advertises massage therapists are available to provide massage therapy for therapeutic needs and well as for relaxation. The LMT was the only person working in the spa that was certified by the BON, but had 4 individuals providing massage therapy to clients. This included one client who had physician prescription for massage and was billing an insurance company. Va. Code § 54.1-3007(2) (5) (8); 18VAC90-50-90 (2) (c) (e) (g) (h).

LMT was convicted on two counts of prostitution. These acts of prostitution occurred while she was working in a spa and providing massages to clients. Va. LMT is also convicted of felony possession of cocaine. LMT has been in treatment twice before for substance abuse issues. LMT did not acknowledge any issues with SA in the past on the application for certification with the BON. Va. Code § 54.1-3007(1) (4) (6); 18VAC90-50-90 (1) (b) .

C. <u>Examples of Non-Reportable Conduct</u>

The licensee failed to report for duty as assigned and did not notify her supervisor at the facility.

When confronted about a performance issue by her supervisor in her office, the licensee became loud and agitated and cursed and threatened the supervisor.

At the end of the licensee's 3-11p.m. shift, she was informed she had to work another 8 hours due to staffing shortage. The licensee refused to stay due to personal reasons and left the facility.

The licensee worked two shifts with an expired registration/certification. Did not realize that the registration/certification had expired. Renewed as soon as realized and did not work until was renewed.

A massage therapist was reported for giving out her personal business cards while working in a spa that is privately owned.

A spa owner employed individuals to provide aroma therapy that were not certified as massage therapist with the Board.

The medication aide gave medications to six residents 45 minutes prior to the time they were to be given.

The licensee has two charges of domestic violence that were recently brought against. Both are misdemeanor charges. No convictions.

APPENDIX H

Board of Optometry

A. Statutory and Regulatory Bases for Disciplinary Actions

Statutes
Va. Code § 54.1-3200. Definitions
Va. Code § 54.1-3201. What constitutes practice of optometry
Va. Code § 54.1-3204 Prohibited acts
Va. Code § 54.1-3215 Reprimand, revocation and suspension.
Va. Code § 54.1-3219 Continuing education
Va. Code § 54.1-3224. Denial, etc., of TPA certification; disciplinary actions; summary suspension under certain circumstances.

Regulations
18 VAC 105-20-40. Standards of conduct
18 VAC 105-20-45. Standards of practice
18 VAC 105-20-46. Treatment guidelines
18 VAC 105-20-47. Therapeutic pharmaceutical agents
18 VAC 105-20-70. Requirements for continuing education

B. Examples of Reportable Conduct.

1. Substandard care (general) – Substandard care of a general nature may involve the optometrist failing to conduct a complete eye examination as described in the regulations. Substandard care may be alleged when an optometrist has failed to prescribe appropriate lenses (if needed by the patient) or to otherwise treat a patient in the manner that is consistent with the diagnosis. It is considered general substandard care for the optometrist to fail to document patient records completely, with the information set forth in the regulations. Va. Code §§ 54.1-3204, 54.1-3215(3) & (17); 18 VAC 105-20-40 (4) & (9) and 18 VAC 105-20-45.

2. Substandard care (TPA) – A TPA-certified optometrists may be rendering substandard care if he administers, dispenses or attempts to prescribe TPA agents inconsistent with his diagnosis or simply the wrong TPA agent. Va. Code §§ 54.1-3204 and 54.1-3215(3) & (17); and 18 VAC 105-20-46 and 18 VAC 105-20-47.

3. Substandard care (practicing beyond scope) – An optometrist may be practicing beyond his scope when he fails to properly refer a case to a TPA certified optometrist or ophthalmologist when the condition presenting is beyond his treatment scope. It would also be alleged when an optometrist administers, dispenses or attempts to prescribe TPA agents without TPA certification. Va. Code §§ 54.1-3204, 54.1-3215(3) & (17), and 54.1-111(2), (3), & (4).

4. Fraudulently obtaining controlled substances for personal use – Optometrists who engage in this activity usually have done so through writing fraudulent prescriptions for fictitious or

actual patients. Va. Code §§ 54.1-3204, 54.1-3215(1); and 18 VAC 105-20-46 and 18 VAC 105-20-47.

5. Sexual misconduct – Optometrists who inappropriately touch patients, staff, and/or others or make lewd remarks during the course of practice would be engaged in sexual misconduct punishable by the Board. Va. Code § 54.1-3215(2) & (3); and 18 VAC 105-20-40 (11).

6. Failing to complete required continuing education -- For general and TPA certified optometrists, this includes fraudulently certifying to the Board that it has been obtained. Va. Code §§ 54.1-3219; 18 VAC 105-20-70.

C. <u>Examples of Non-Reportable conduct</u>

The following are examples of conduct, though problematic, are not actionable by the Board:

1. Absenteeism/Tardiness -- An optometrist being late for or missing an appointment, unless the patient's health was adversely affected by it or there was a clear indication of substance abuse or mental and/or physical impairment.

2. Appearance – An optometrist's sloppy appearance, unless there are clear indicators of substance abuse or mental and/or physical impairment.

3. Rudeness – An optometrist's brusque, curt, or rude behavior, unless there are clear indicators of substance abuse or mental and/or physical impairment.

4. Fee issues – Issues related to fee structure/pricing or insurance claims, unless an optometrist's activities constitute fraudulent or deceitful behavior.

5. General personnel-related issues – Personnel management issues (filing of timesheets, parking in a restricted space or failing to attend a staff meeting), unless they adversely affect patient care or constitute unprofessional conduct as defined in statute or regulation.

APPENDIX I

Board of Pharmacy

A. Statutory and Regulatory Bases for Disciplinary Actions

Code of Virginia:

§ 54.1-2400. General powers and duties of health regulatory boards
§ 54.1-2408.1. Summary suspension of licenses, certificates, registrations, or multistate licensure privilege; allegations to be in writing.
§ 54.1-2409. Mandatory suspension or revocation; reinstatement; appeal.
§ 54.1-3314.1. Continuing education requirements; exemptions; extensions; procedures; out-of-state licensees; nonpractice licenses
§ 54.1-3316. Refusal; revocation; suspension and denial.

Title 54.1, Chapter 33. Pharmacy
Title 54.1, Chapter 34. The Drug Control Act

Virginia Administrative Code:

18 VAC 110-20-10 et seq.
18 VAC 110-30-10 et seq.

B. Examples of Reportable Conduct

The pharmacist dispenses a drug with the incorrect drug and the bottle is mislabeled with the name of the drug that was actually prescribed.
[Va. Code §§ 54.1-3316(7), 54.1-3320(6), and 54.1-3462; 18 VAC 110-20-270]

A pharmacist or pharmacy technician diverts drugs from the pharmacy, uses on duty, performs his duties while impaired, and is convicted of embezzlement.
[Va. Code §§ 54.1-3316(1), (3), (4), (7), (9) and (11)]

A pharmacist allows a pharmacy technician to work unsupervised.
[Va. Code §§ 54.1-3316(1) and (7); 18VAC 110-20-270(A)]

A pharmacist allows an individual to practice pharmacy without being licensed or an individual to practice as a pharmacy technician without being registered.
[Va. Code §§ 54.1-3316(1), (6) and (7); and 54.1-3434]

A pharmacist does not complete the required fifteen contact hours of continuing education.
[Va. Code §§ 54.1-3314.1(A), 54.1-3316 (7) and (14); 18 VAC 110-20-90]

A pharmacy technician does not complete the required five contact hours of continuing education. [Va. Code § 54.1-3316 (7) and (14); 18 VAC 110-20-106]

C. Examples of Non-Reportable Conduct

A source reports that a pharmacy charges more for his prescription than did his former pharmacy.

A source reports that the pharmacist doesn't dress well and always wears shorts in the summer.

A pharmacist reports that his partner is usually 30 minutes late for work.

APPENDIX J

Board of Physical Therapy

A. Statutory and Regulatory Bases for Disciplinary Action

Va. Code § 54.1-3473. Definitions.
Va. Code § 54.1-3474. Unlawful to practice without a license; continuing competency requirements.
Va. Code § 54.1-3476. Exemptions.
Va. Code § 54.1-3480. Refusal, revocation or suspension.
Va. Code § 54.1-3480.1. Continuing education.
Va. Code § 54.1-3481. Unlawful designation as physical therapist or physical therapist assistant.
Va. Code § 54.1-3482. Certain experience and referrals required; unlawful to practice physical therapist assistance except under direction and control of a licensed physical therapist.
Va. Code § 54.1-3483. Unprofessional conduct.

18 VAC 112-20-90. Individual responsibilities to patients.
18 VAC 112-20-100. Supervisory responsibilities.
18 VAC 112-20-110. General requirements.
18 VAC 112-20-120. Individual responsibilities to patients and to physical therapists.
18 VAC 112-20-131. Continued competency requirements for renewal of an active license.

B. Examples of Reportable conduct.

1. In a hospital, an accident victim is referred to a physical therapist. The victim is partially paralyzed. A dry needling procedure is used to stimulate nerves in the muscles. A nerve is severely damaged causing additional trauma and injury to the patient. Va. Code §§ 54.1-3483 (4) and 54.1-3480 (4).

2. A physical therapist within a clinic setting touches female patients inappropriately. Va. Code § 54.1-3483 (10).

3. A physical therapist assistant in a nursing home evaluates patients and develops treatment plans. 18VAC112-20-100 and 18VAC112-20-120.

4. A physical therapist or physical therapist assistant charges and/or documents services never rendered. 54.1-3483 (7).

C. Examples of Non Reportable Conduct

1. A physical therapist refuses a patient due to the non-referral of a physician and the cancellation of the patient’s insurance.

2. A physical therapist provides direct services without a referral at a little league football game.

3. A physical therapist does not accept a referral from a physician.

APPENDIX K

Board of Psychology

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 32.1-127.1:03. Patient health records privacy.
Va. Code § 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity
Va. Code § 54.1-2400.4. Mental health service providers' duty to inform; immunity; civil penalty.
Va. Code § 54.1-2403.3. Medical records; ownership; provision of copies.
Va. Code § 54.1-2406. Treatment records of practitioners.
Va. Code § 54.1-2400.7. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.
Va. Code § 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

Psychology – 18 VAC 125-20-150. Standards of practice.
Sex Offender Treatment Provider – 18 VAC 125-30-100. Standards of practice.

B. Examples of Reportable Conduct

1. Failure to report known or suspected child abuse. Va. Code § 63.2-1509.
2. Boundary violations, which may include entering into a business relationship with a client, bartering for services in lieu of payment for services, or developing a social relationship with a client. 18VAC125-20-150.B.6.
3. Engaging in a romantic or sexual relationship with a client or former client, spouse or relative of a client. 18VAC125-20-150.b.8
4. Failure to create or maintain therapy records. 18VAC 125-20-150.B.13
5. Failure to maintain the confidentiality of the therapeutic relationship. 18 VAC125-20-150.B.9.

C. Examples of Non-Reportable Conduct

1. Billing for frequent or excessive returned phone calls to the client.
2. Charging for last minute cancellations for scheduled appointments.
3. Releasing a minor's treatment records to non-custodial parents.
4. Providing pertinent clinical information and diagnoses to third party payers.
5. Termination of the therapeutic relationship when it is no longer helpful or referring the client to another therapist.
6. Confronting a client about inappropriate behavior.
7. "Treating my child without my permission" (when one parent takes the child to a therapist and the other parent did not give "their permission").

APPENDIX L

Board of Social Work

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 32.1-127.1:03. Patient health records privacy.
Va. Code § 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.
Va. Code § 54.1-2400.4. Mental health service providers' duty to inform; immunity; civil penalty.
Va. Code § 54.1-2403.3. Medical records; ownership; provision of copies.
Va. Code § 54.1-2406. Treatment records of practitioners.
Va. Code § 54.1-2400.7. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.
Va. Code § 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

Regulations Governing the Practice of Social Work – 18 VAC 140-20-10., *et seq.*

B. Examples of Reportable Conduct

1. Failure to report known or suspected child abuse. Va. Code § 63.2-1509.
2. Boundary violations which may include entering into a business relationship with a client or bartering for services in lieu of payment for services or developing a social relationship with a client. 18VAC 140-20-150.D.1.
3. Engaging in a romantic or sexual relationship with a client or former client, spouse or relative of a client. 18 VAC 140-20-150.D.2.
4. Failure to create or maintain therapy records. 18 VAC 140-20-150.C. 1-5.
5. Failure to maintain the confidentiality of the therapeutic relationship. 18 VAC 140-20-150.B.8.

C. Examples of Non-Reportable Conduct

1. Billing for frequent or excessive returned phone calls to the client.
2. Charging for last minute cancellations for scheduled appointments.
3. Releasing a minor's treatment records to non-custodial parents.
4. Providing pertinent clinical information and diagnoses to third party payers.
5. Termination of the therapeutic relationship when it is no longer helpful or referring the client to another therapist.
6. Confronting a client about inappropriate behavior.
7. "Treating my child without my permission" (when one parent takes the child to a therapist and the other parent did not give "their permission").

APPENDIX M

Board of Veterinary Medicine

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 54.1-3800 Practice of veterinary medicine
Va. Code § 54.1-3805 License required
Va. Code § 54.1-3805.2 Continuing education
Va. Code § 54.1-3806 Licensed veterinary technicians
Va. Code § 54.1-3806.1 Disclosure forms required
Va. Code § 54.1-3807 Refusal to grant and to renew; revocation and suspension of licenses and registrations
Va. Code § 54.1-3812 Release of records
Va. Code § 54.1-3813 Registration of equine dental technicians

Regulations of the Virginia Board of Veterinary Medicine:
18 VAC 150-20-70 Licensure renewal requirements
18 VAC 150-20-140 Unprofessional conduct
18 VAC 150-20-172 Delegation of duties
18 VAC 150-20-180 Requirements to be registered as a veterinary establishment
18 VAC 150-20-181 Requirements for veterinarian-in-charge
18 VAC 150-20-190 Requirements for drug storage, dispensing, destruction, and records for all establishments, full service and restricted
18 VAC 150-20-195 Recordkeeping
18 VAC 150-20-200 Standards for veterinary establishments
18 VAC 150-20-210 Revocation or suspension of a veterinary establishment permit
18 VAC 150-20-220 Requirements for registration as an equine dental technician
18 VAC 150-20-240 Standards of practice for equine dental technicians

B. Examples of Reportable Conduct.

1. Substandard care (general) – Substandard care of a general nature that endangers the health and welfare of the patients or the public or being unable to practice veterinary medicine or as an equine dental technician with reasonable skill and safety.

2. Fraudulently obtaining controlled substances for personal use – Veterinarians and veterinary technicians who engage in this activity usually have done so by diverting drug stocks maintained at the facility or writing fraudulent prescriptions. Va. Code § 54.1-3807.

5. Veterinary medicine not being practiced from a registered veterinary facility. Va. Code § 54.1-3804 (3); 18 VAC 150-20-180 (A) (1)

6. Failing to complete required continuing education – This includes fraudulently certifying to the Board that it has been obtained. Va. Code §§ 54.1-3805.2; 18 VAC 150-20-70.

C. Examples of Non-Reportable conduct

The following are examples of conduct, though problematic, are not actionable by the Board:

1. Absenteeism/Tardiness – A veterinarian or veterinary technician being late for or missing an appointment would not be reportable, unless the patient's health was adversely affected by it or there was a clear indication of substance abuse or mental and/or physical impairment.

2. Appearance – A veterinarian's or veterinary technician's sloppy appearance would not be reportable, unless there are clear indicators of substance abuse or mental and/or physical impairment.

3. Rudeness – Also non-reportable would be a veterinarian's or a veterinary technician's brusque, curt, or rude behavior, again unless there are clear indicators of substance abuse or mental and/or physical impairment.

4. Fee issues – Unless a veterinarian's or veterinary technician's activities constitute fraudulent behavior, the Board has no jurisdiction over patient fees or other compensation issues.

5. General personnel-related issues – Unless they adversely affect patient care or constitute unprofessional conduct as defined in statute or regulation, personnel management problems such as the veterinarian or veterinary technician has failed to file timesheets, parked in a restricted space, or failed to attend staff meetings are not actionable by the Board.