VIRGINIA BOARD OF DENTISTRY

Regulatory-Legislative Committee

REVISED AGENDA

February 12, 2016

Department of Health Professions

Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center

Henrico, Virginia 23233

TIME		**PAGE**
9:30 a.m.	**Call to Order – Melanie C. Swain, RDH, Chair**	
	Evacuation Announcement – Ms. Reen	
	Regulatory Advisory Panel (RAP) Discussion on the Education and Practice of Dental Assistants I and II	
	• Comments from the 5/8/2015 forum on Policy Strategies to Increase Access to Dental Treatment	**P1**
	• GD 60-7 Delegation to Dental Assistants	**P2**
	• Education Requirements in the Regulations Governing Dental Assistants	**P4**
	• GD 60-8 Educational Requirements for Dental Assistants II	**P6**
	• DANB Certified Restorative Functions Dental Assistant Certification Program	**P7**
	RAP discussion will conclude no later than 11:30 pm.	
	Additional Public Comment	
	Approval of Minutes	
	October 16, 2015 minutes	**P11**
	Status Report on Legislation and Regulatory Actions – Ms. Yeatts	**BLUE PAPERS**
	Recommendation on the Requirements for Dental Assistant II Registration	
	Draft Guidance Document Addressing Dental Practice	**P16**
	• December 7, 1992 AG Opinion	**P20**
	Next meetings	
Adjourn		

Comments Addressing Dental Assistants from the 5/8/2015 forum on Policy Strategies to Increase Access to Dental Treatment

- The Health Department does not have a big position or stake in the DAII discussions. We don't really feel that type of provider expansion is necessarily going to put care providers in new areas.

- The VDA's policy is in support of scaling technicians to help address the access to care issue.

- A dental hygienist should be able to enter a DAII program and take the clinical components to obtain DAII without obtaining CDA status.

- The Virginia Board of Dentistry DAII requirements for didactic and laboratory training hours are necessary.

- I think the change in the regulations from hours to number of clinical procedures completed should be something to consider. I suggest to the Virginia Board of Dentistry to reach out to the DAII programs to decide the amount of procedures that students should complete.

- We have [dental hygiene] students graduating with all skill sets, pretty much a DAII for the most part, maybe not the amount of hours that is required for the DAII program…

- I believe that the short term for the DAII, hygienists would be the quickest way to get more DAsII in the state of Virginia.

- I believe that if we increase the education of a DAI to be a CDA, very, very quickly would the DAII be filled in the state of Virginia.

- Something is wrong in the process from CDA to DAII.

- The CDA is a very difficult exam to take if you have not gone to school and been educated.

- We need to make dental assistants aware that they can sit for the CDA, educate them and have them become a DAII.

- Well, the problem is the clinical portion component of the DAII, because pretty much they have to work 300 hours if you total every component that they need to get. So it also falls back on the dentist's side of it. They also have to find a dentist to support them in that…

Guidance Document: 60-7

Adopted: December 3, 2010
Revised: March 9, 2012

VIRGINIA BOARD OF DENTISTRY
DELEGATION TO DENTAL ASSISTANTS

DUTIES THAT MAY BE DELEGATED TO DENTAL ASSISTANTS I AND II UNDER INDIRECT SUPERVISION OF A DENTIST
GENERAL SERVICES
Prepare patients for treatment/seating/positioning chair/placing napkin
Perform health assessment
Preventive education and oral hygiene instruction
Perform mouth mirror inspection of the oral cavity
Chart existing restorations and conditions as instructed by the dentist
Take, record and monitor vital signs
Transfer dental instruments
Prepare procedural trays/armamentaria set-ups
Maintain emergency kit
Sterilization and disinfection procedures
Compliance with OSHA Regulations and Centers for Disease Control Guidelines
Prep lab forms for signature by the dentist
Maintenance of dental equipment
Select and manipulate gypsums and waxes
RADIOLOGY and IMAGING
Mount and label images
Place x-ray film and expose radiographs ONLY WITH REQUIRED TRAINING
Use intraoral camera or scanner to take images for tooth preparation and CAD CAM restorations
RESTORATIVE SERVICES
Provide pre- and post operative instructions
Place and remove dental dam
Maintain field of operation through use of retraction, suction, irrigation, drying
Acid Etch - Apply/wash/dry remove only when reversible
Amalgam: Place only
Amalgam: Polish only with slow-speed handpiece and prophy cup
Apply pit and fissure sealants
Apply and cure primer and bonding agents
Fabricate, cement, and remove temporary crowns/restorations
Make impressions and pour and trim study/diagnostic models and opposing models
Make impressions for athletic/night/occlusal/snore mouthguards and fluoride/bleaching trays
Matrices - place and remove
Measure instrument length
Remove excess cement from coronal surfaces of teeth
Remove sutures
Dry canals with paper points
Mix dental materials
Place and remove post-extraction dressings/monitor bleeding
Rubber Dams: Place and remove
Sterilization and disinfection procedures
Take bite and occlusal registrations
HYGIENE
Apply dentin desensitizing solutions
Apply fluoride varnish, gels, foams and agents
Apply pit and fissure sealant
Address risks of tobacco use
Give oral hygiene instruction
Polish coronal portion of teeth with rotary hand piece and rubber prophy cup or brush
Place and remove periodontal dressings
Clean and polish removable appliances and prostheses

VIRGINIA BOARD OF DENTISTRY
DELEGATION TO DENTAL ASSISTANTS

DUTIES THAT MAY BE DELEGATED TO DENTAL ASSISTANTS I AND II UNDER INDIRECT SUPERVISION OF A DENTIST CONTINUED
ORTHODONTICS
Place and remove elastic separators
Check for loose bands and brackets
Remove arch wires and ligature ties
Place ligatures to tie in archwire
Select and fit bands and brackets for cementation by dentist
Instruct patients in placement and removal of retainers and appliances after dentist has fitted and made adjustments in the mouth
Take impressions and make study models for orthodontic treatment and retainers
BLEACHING
Take impressions and fabricate bleaching trays
Apply bleach/whitener
Bleach with light but not laser
Instruct pt on bleaching procedures
SEDATION AND ANESTHESIA SERVICES
Apply topical Schedule VI anesthetic
Monitor patient under nitrous oxide
Monitor patient under minimal sedation/anxiolysis
Monitor patient under moderate/conscious sedation **ONLY WITH REQUIRED TRAINING**
Monitor patient under deep sedation/general anesthesia **ONLY WITH REQUIRED TRAINING**
Take blood pressure, pulse and temperature

DUTIES THAT MAY BE DELEGATED TO DENTAL ASSISTANTS I AND II UNDER INDIRECT SUPERVISION OF A DENTAL HYGIENIST
Prepare patients for treatment/seating/positioning chair/placing napkin
Perform health assessment
Preventive education and oral hygiene instruction
Transfer dental instruments
Prepare procedural trays/armamentaria set-ups
Maintain emergency kit
Sterilization and disinfection procedures
Compliance with OSHA Regulations and Centers for Disease Control Guidelines
Maintenance of dental equipment
Polish coronal portion of teeth with rotary hand piece and rubber prophy cup or brush
Place and remove periodontal dressings
Clean and polish removable appliances and prostheses
Mount and label images
Place x-ray film and expose radiographs **ONLY WITH REQUIRED TRAINING**

DUTIES THAT MAY ONLY BE DELEGATED TO DENTAL ASSISTANTS II UNDER DIRECT SUPERVISION OF A DENTIST
Condense/pack and carve amalgam
Place, cure and finish composite resin restorations only with slow-speed handpiece
Apply base and cavity liners/perform pulp capping procedures
Final cementation of crowns and bridges after adjustment and fitting by the dentist
Make final impressions and fabricate master casts
Place and remove non-epinephrine retraction cord

Excerpts from the REGULATIONS GOVERNING THE PRACTICE OF DENTAL ASSISTANTS

18VAC60-30-115. General application requirements.

A. All applications for registration as a dental assistant II shall include:

1. Evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another certification from a credentialing organization recognized by the American Dental Association and acceptable to the board, which was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control;
2. Verification of completion of educational requirements set forth in 18VAC60-30-120; and
3. Attestation of having read and understood the laws and regulations governing the practice of dentistry and dental assisting in Virginia and of the applicant's intent to remain current with such laws and regulations.

18VAC60-30-120. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board.

B. To be registered as a dental assistant II, a person shall complete the following requirements from an educational institution that maintains a program in dental assisting, dental hygiene or dentistry accredited by CODA:

1. At least 50 hours of didactic course work in dental anatomy and operative dentistry that may be completed online.
2. Laboratory training that may be completed in the following modules with no more than 20% of the specified instruction to be completed as homework in a dental office:
   a. At least 40 hours of placing, packing, carving, and polishing of amalgam restorations and pulp capping procedures;
   b. At least 60 hours of placing and shaping composite resin restorations and pulp capping procedures;
   c. At least 20 hours of taking final impressions and use of a non-epinephrine retraction cord; and
   d. At least 30 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.
3. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training that may be completed in a dental office in the following modules:
   a. At least 80 hours of placing, packing, carving, and polishing of amalgam restorations;
   b. At least 120 hours of placing and shaping composite resin restorations;
   c. At least 40 hours of taking final impressions and use of a non-epinephrine retraction cord; and
   d. At least 60 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.
4. Successful completion of the following competency examinations given by the accredited educational programs:
   a. A written examination at the conclusion of the 50 hours of didactic coursework;
   b. A practical examination at the conclusion of each module of laboratory training; and
   c. A comprehensive written examination at the conclusion of all required coursework, training, and experience for each of the corresponding modules.

C. All treatment of patients shall be under the direct and immediate supervision of a licensed dentist who is responsible for the performance of duties by the student. The dentist shall attest to successful completion of the clinical competencies and restorative experiences.

18VAC60-30-140. Registration by endorsement as a dental assistant II.

A. An applicant for registration by endorsement as a dental assistant II shall provide evidence of the following:

1. Hold current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association;
2. Be currently authorized to perform expanded duties as a dental assistant in each jurisdiction of the United States;
3. Hold a credential, registration, or certificate with qualifications substantially equivalent in hours of instruction and course content to those set forth in 18VAC60-30-120 or if the qualifications were not substantially equivalent the dental assistant can document experience in the restorative and prosthetic expanded duties set forth in 18VAC60-30-60 for at least 24 of the past 48 months preceding application for registration in Virginia.

B. An applicant shall also:

1. Be certified to be in good standing from each jurisdiction of the United States in which he is currently registered, certified, or credentialed or in which he has ever held a registration, certificate, or credential;
2. Not have committed any act that would constitute a violation of § 54.1-2706 of the Code; and
3. Attest to having read and understand and to remain current with the laws and the regulations governing dental practice in Virginia.

Adopted: December 2, 2011
Revised: December 11, 2015

Virginia Board of Dentistry

Educational Requirements for Dental Assistants II

- §54.1-2729.01 of the Code of Virginia permits the Board to prescribe the education and training requirements that must be completed for a person to qualify for registration as a dental assistant II.

- Every applicant for registration must complete 50 hours of didactic coursework in dental anatomy and operative dentistry required by 18VAC60-30-120.B.1 and the written examinations required by 18VAC60-30-120.B.4.

- 18VAC60-30-120.B.2 and 3, of the Regulations Governing the Practice of Dental Assistants specifies four modules of laboratory training, clinical experience and examination that may be completed in order to qualify for registration as a dental assistant II. The Board interprets these provisions to permit someone to complete one or more of the modules to qualify for registration. An applicant does not have to complete all four modules. However, the educational institution offering the dental assistant II program has the discretion to decide how to structure its program.

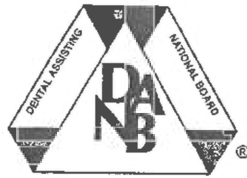
- The registration issued by the Board to a dental assistant II shall specify which of the six delegable duties listed in 18VAC60-30-60 may be delegated to the registrant as follows:

    - Completion of the laboratory training, clinical experience module on placing, packing, carving, and polishing amalgam restorations qualifies a registrant to perform pulp capping procedures and to pack and carve amalgam restorations.

    - Completion of the laboratory training and clinical experience module on placing and shaping composite resin restorations qualifies a registrant to perform pulp capping procedures and to place and shape composite resin restorations.

    - Completion of the laboratory training and clinical experience module on taking final impressions and using non-epinephrine retraction cord qualifies a registrant to take final impressions and to use non-epinephrine retraction cord.

    - Completion of the laboratory training and clinical experience module on final cementation of crowns and bridges after adjustment and fitting by a dentist qualifies a registrant to perform final cementation of crowns and bridges.



Dental Assisting National Board, Inc.

Measuring Dental Assisting Excellence®

CRFDA®

Certified Restorative Functions Dental Assistant Certification Program Overview

DANB's Certified Restorative Functions Dental Assistant (CRFDA) component exams are an objective measure of knowledge-based competency in the critical restorative functions that qualified dental assistants regularly perform in states that allow such duties to be delegated.

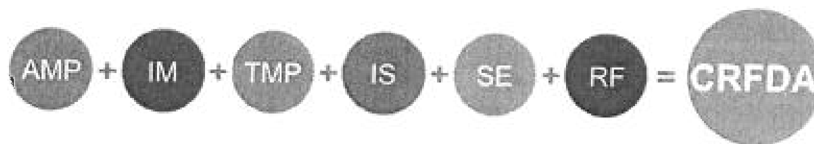
Component Exams

CRFDA certification consists of the following component exams:

- Anatomy, Morphology and Physiology (AMP) exam — 105 questions
- Impressions (IM) exam — 80 multiple-choice questions
- Temporaries (TMP) exam — 80 multiple-choice questions
- Sealants (SE) exam — 50 multiple-choice questions (increasing to 80 questions in 2016)
- Isolation (IS) exam — 60 multiple-choice questions
- Restorative Functions (RF) exam — 105 multiple-choice questions

Candidates may take each component exam separately or in the following groupings. A candidate must pass all six component exams within a three-year period to earn DANB's CRFDA certification.

- Group 1 — Impressions (IM); Temporaries (TMP)
- Group 2 — Isolation (IS); Sealants (SE); Restorative Functions (RF)



Eligibility Requirements

There are no eligibility requirements to take five of the six components of the CRFDA certification program. However, a candidate must meet one of three eligibility pathways to qualify to take the RF exam. All pathways require candidates to hold current DANB-accepted, hands-on CPR, BLS or ACLS certification. The eligibility pathways are as follows:

Pathway I Current or former Certified Dental Assistant (CDA) certificants whose certification lapsed no more than two years ago

Pathway II Commission on Dental Accreditation (CODA)-accredited dental assisting or dental hygiene program or current Registered Dental Hygienist (RDH) license. If the RDH license is issued in Alabama and the candidate is not a graduate of a CODA-accredited dental hygiene program, the candidate must meet the requirements of Pathway I.

Pathway III Successfully complete an Expanded Functions Dental Auxiliary or restorative course/program offered by an institution with a CODA-accredited dental assisting, dental hygiene or dental school program; Minimum of 3,500 hours work experience as a dental assistant accrued during the previous two to four years

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Restorative Functions (RF)

Exam Blueprint and Suggested References for Exam Preparation

DANB's RF exam is a component of the DANB Certified Restorative Functions Dental Assistant (CRFDA®) certification.

CRFDA component exams

Anatomy, Morphology and Physiology (AMP)
Impressions (IM)
Temporaries (TMP)
Isolation (IS)
Sealants (SE)
Restorative Functions (RF)

Note that each state's dental board implements regulations and establishes rules for delegating legally allowable duties to dental assistants. Passing one or more of the DANB component exams or earning DANB certification only conveys authority to perform these duties in those states that recognize these exams or this certification as meeting state dental assisting requirements. This information is at www.danb.org/Meet-State-Requirements.aspx.

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Restorative Functions (RF) Exam Blueprint

(7%) **I. CAVITY LINERS AND BASES**

A. Purpose
B. Materials
C. Application

(7%) **II. CAVITY CLASSIFICATIONS**

(20%) **III. AMALGAM RESTORATIONS**

A. Place, contour, finish, adjust and polish
B. Materials/physical properties (e.g., mercury)

(30%) **IV. COMPOSITE, GLASS IONOMER AND COMPOMER RESTORATIONS**

A. Etch and bond
B. Place, contour, cure, finish, adjust and polish
C. Materials
  1. Classifications
  2. Physical properties
    a. Shrinkage
    b. Wear resistance
    c. Polishability
  3. Composition
  4. Shade selection

(12%) **V. STAINLESS STEEL CROWNS**

A. Size, fit and place (i.e., cement)
B. Primary dentition
C. Permanent dentition

(15%) **VI. PROCEDURAL CONSIDERATIONS**

A. Moisture control
B. Advantages/disadvantages
C. Indications/contraindications
D. Homecare instructions/patient education

(9%) **VII. INFECTION CONTROL/OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) PROTOCOL**

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Restorative Functions (RF)

Suggested References for Exam Preparation

DANB's RF exam is a component of the DANB Certified Restorative Functions Dental Assistant (CRFDA®) certification.

DANB exam committees use the following textbooks and reference materials to develop this exam. This list does not include all of the available textbooks and materials for studying for this exam; these are simply the resources that exam committee subject matter experts determined as providing the most up-to-date information needed to meet or surpass a determined level of competency for this exam.

This list is intended to help prepare for this exam. It is not intended to be an endorsement of any of the publications listed. You should prepare for DANB certification and component exams using as many different study materials as possible.

1. Bird, Doni L., and Debbie S. Robinson. *Modern Dental Assisting.* 10th and 11th ed. St. Louis, MO: Elsevier/Saunders, 2012 and 2015.
2. Hatrick, Carol D., and W. S. Eakle. *Dental Materials: Clinical Applications for Dental Assistants and Dental Hygienists.* 3rd ed. St. Louis, MO: Elsevier/Saunders, 2016.
3. Phinney, Donna J. and Judy H. Halstead. *Dental Assisting: A Comprehensive Approach.* 3rd and 4th ed. Clifton Park, NY: Delmar, 2008 and 2013.
4. Powers, John M. and John C. Wataha. *Dental Materials: Properties and Manipulation.* 10th ed. St. Louis, MO: Elsevier/Mosby, 2013.
5. Bird, Doni L., and Debbie S. Robinson. *Essentials of Dental Assisting.* 4th and 5th ed. St. Louis, MO: Elsevier/Saunders, 2007 and 2013.
6. Miller, Chris H., and Charles Palenik. *Infection Control and Management of Hazardous Materials for the Dental Team.* 4th and 5th ed. St. Louis, MO: Elsevier/Mosby, 2009 and 2014.

Note that each state's dental board implements regulations and establishes rules for delegating legally allowable duties to dental assistants. Passing one or more of the DANB component exams or earning DANB certification only conveys authority to perform these duties in those states that recognize these exams or this certification as meeting state dental assisting requirements. This information is at www.danb.org/Meet-State-Requirements.aspx.

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Unapproved

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY-LEGISLATIVE COMMITTEE
October 16, 2015

TIME AND PLACE:	The meeting of the Regulatory-Legislative Committee of the Board of Dentistry was called to order at 9:04 a.m., on October 16, 2015, Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 3, Henrico, Virginia.
PRESIDING:	Melanie C. Swain, R.D.H., Chair
MEMBERS PRESENT:	John M. Alexander, D.D.S. Tonya A. Parris-Wilkins, D.D.S. Bruce S. Wyman, D.M.D.
OTHER BOARD MEMBERS:	Charles E. Gaskins, III, D.D.S. Al Rizkalla, D.D.S. Evelyn M. Rolon, D.M.D. Tammy K. Swecker, R.D.H. James D. Watkins, D.D.S
STAFF PRESENT:	Sandra K. Reen, Executive Director Kelley W. Palmatier, Deputy Executive Director Huong Q. Vu, Operations Manager
OTHERS PRESENT:	David E. Brown, D.C., Director, Department of Health Professions Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
ESTABLISHMENT OF A QUORUM:	With all members of the Committee present, a quorum was established.
PUBLIC COMMENT:	**Quinn Dufurrena, D.D.S., J.D.,** Executive Director of the Association of Dental Support Organizations (ADSO), stated that ADSO members help owner dentists with back office activities such as accounting, marketing, IT, and equipment. He added that ADSO has a Code of Ethics which prohibits interference with clinical decisions and records access and the creation of quotas. He added that ADSO would like to be involved in any discussion of regulating dental support organizations. **Dennis Gaskins, D.D.S.** stated that he owns two dental practices and works under the umbrella of a dental support organization (DSO). He said he does not receive instructions regarding his practice decisions and that working with a DSO allows him to keep his fees low and to treat more people. **David Slezak, D.D.S.** of Affordable Care, Inc., noted his concerns about the Texas laws addressing ownership of dental practices. He said he is ready to assist the Board in giving dentists the right to choose how to run their business.

Michelle McGregory, R.D.H., Director of the VCU Dental Hygiene Program and President of the Virginia Dental Hygienists' Association. She said VCU supports expansion of remote supervision. She noted that she provided evidence which supports increasing access to dental care at the Board's May 8th Open Forum. She stated that collaboration between dentists and dental hygienists is a win–win situation to increase access to dental care.

APPROVAL OF MINUTES:

Ms. Swain asked if Committee members had reviewed the October 24, 2014 minutes. Dr. Wyman moved to accept the minutes. The motion was seconded and passed.

DHP DIRECTOR'S REPORT:

Dr. Brown welcomed Dr. Parris-Wilkins to the Board. He then said he has submitted two draft legislative proposals on access to care to Secretary Hazel. He noted that one of the proposals addressed the practice of nurse practitioners and the other addressed the expansion of remote supervision settings for dental hygienists. He explained that Secretary Hazel has not decided if he will advance either of the proposals.

STATUS REPORT ON REGULATOR ACTIONS:

Ms. Yeatts reported:

- The NOIRA for a law exam is pending Governor's approval to publish and has been in this status for more than 139 days;
- The Fast-Track action to require capnography for monitoring anesthesia or sedation was rejected by the Department of Planning and Budget and was resubmitted as a NOIRA. The NOIRA has been at the Governor's Office for approval to publish for more than 34 days;
- The Fast-Track action to recognize the Commission on Dental Accreditation of Canada is pending Governor's approval to publish and been in this status for more than 24 days;
- The Periodic Review to reorganize Chapter 20 into four chapters will be published as final regulations on November 2, 2015 and go into effect on December 2, 2015. She noted that this has been under review for about four years. She recommended communication with all licensees since the regulations are quite different from the current regulations. She added that the Registrar's Office commented that the regulations were well written and credited Ms. Reen for her effort; and
- The exempt action to decrease one time renewal fees has been approved and will go into effect on December 2, 2015.

ASSIGNMENTS:

Address who may own a dental practice

Ms. Swain called for discussion. Ms. Reen explained the Board asked the Committee to address:

1. How long a non-dentist relative such as a widow can operate a dental practice; and

2. Options for holding practice management companies and other such business entities accountable for policies and practices that contribute to unsafe dental treatment.

Ms. Reen said the Committee asked staff to contact several state agencies to get information on the authority they have to hold practice management companies and other such businesses accountable for policies and practices that contribute to unsafe dental treatment:

- The State Corporation Commission (SCC) indicated that it does not handle complaints against businesses unless they fall under one of their bureaus (insurance company, financial institution, utility company, etc);

- The Department of Medical Assistance Services (DMAS) stated that it monitors Board actions to determine if it will take action against licensees. Several meetings were held with DMAS staff and contact points were established to facilitate information sharing during investigations; and

- The Office of the Attorney General said it takes complaints about fraudulent billing practices through its Consumer Protection Section (CPS) and frequently refers complaints about health care to DHP. This section does do joint investigations with other state agencies and agreed to review cases involving practice management companies where fraud is suspected for conducting joint investigations.

Ms. Reen then expressed her concern that the Board has no legal authority to regulate practice management companies and asked for guidance on addressing this topic further. Discussion followed about: claims by respondents that the management company they have affiliated with has influenced patient care decisions; adding regulations on the boundaries a dentist must adhere to when associating with management companies using the Texas Code as the model; and, the comments from the public that contracts between dentists and management companies are working within reasonable bounds. The Committee agreed by consensus to recommend that the Board continue to monitor this topic for now and asked staff to confer with Board Counsel to develop a guidance document which sets forth the current law on practice ownership and lists the decisions that only a dentist can make.

Dr. Alexander asked if action is needed on how long a widow may own a dental practice. Ms. Reen responded there is no statute which addresses this but the Board does receive inquiries where there is a belief there is a time limit for a spouse to own a dental practice. She added that current law only provides that no dentist shall be supervised by anyone who is not a dentist. The Committee agreed by consensus to recommend that the Board take no action to limit the amount of time a family member can own a dental practice.

Dr. Watkins suggested that the Board issue a guidance document on the legal provisions for ownership and where a dentist might practice and include a list of the decisions only a dentist can make. Following discussion it was agreed by consensus that staff would work with Board Counsel on development of a guidance document.

Consider establishing a policy on the role of a dentist in treating sleep apnea

Ms. Reen stated the Board requested consideration of having a policy on the appropriate role of dentists in treating sleep apnea. She added that the questions is whether a dentist can diagnose the condition then reported that the position of the Board in disciplinary cases has consistently been that sleep apnea must first be diagnosed by a physician who can then coordinate with a dentist to provide treatment. During the Committee's discussion, Ms. Yeatts advised that there is a new law, 54.1-2957.15, which requires the technologists who do sleep study must be under the direction and supervision of a physician. By consensus, the Committee decided to recommend no action be taken at this time.

Work on a proposal to expand the use of remote supervision to free clinics and settings serving children and the elderly and to review the education requirements for dental assistants II

Ms. Swain said many of the speakers at the Board's forum recommended these actions to improve access to dental treatment then asked Ms. Swecker to start discussion by addressing her review of these topics, as noted in the material she submitted in the agenda. Ms. Swecker stated that the requirement to be a certified dental assistant (CDA) is a drawback for increasing the number of dental assistants II (DAII) and recommended establishing a path for dental hygienists to practice the functions delegable to DAIIs without requiring them to become a CDA as a way to provide care to elderly patients in facilities such as nursing homes. Discussion followed with no action taken.

Ms. Reen asked Dr. Browder from the Virginia Department of Health (VDH) if he would address the implementation of remote supervision in the health system. He agreed and reported that: the scope of practice of dental hygienists (RDH) was not changed; RDHs are trained and calibrated; they assess patient needs and provide hygiene treatment without a dentist's examination; RDHs have access to a dentist and are required to make contact at least every two weeks; and, schedules are maintained so the supervising dentist knows where practice is occurring and what treatment is being provided. He said treatment needs are referred to community dentists. Dr. Rolon and Dr. Parris-Wilkins commented that the VDH program is working well in their communities. Dr. Brown gave out copies of the proposed draft legislation submitted to Secretary Hazel. Following discussion, a motion by Dr. Alexander to present the proposal to the Board for discussion was seconded and passed. Discussion followed regarding the possibility of expanding the type of underserved groups, but it was agreed to do so at the December board meeting when further input is received from interested groups for consideration.

Discussion moved to the education requirements for dental assistants II (DAII). Ms. Reen said that years ago dentists in rural areas told the Board they needed help in order to see more patients. In response, the Board worked with educators from accredited dental assisting programs and the VCU School of Dentistry to develop the curriculum and regulations for practice as a DA II. She added that there are two programs offering DAII training. Ms. Yeatts noted that DAs II in Virginia have broader duties than the expanded function DAs (EFDA) in other states. Following discussion of reducing the requirements or requiring passage of a clinical examination, Dr. Wyman moved to recommend that the DA II regulations not be changed at this time. The motion was seconded and passed.

Consider policy action on the subject of teledentistry

Ms. Swain opened the floor for discussion. Discussion followed on the need for a policy which requires licensure in Virginia establishes the doctor-patient relationship and addresses the security of patient information. Dr. Wyman moved to have staff revise the Board of Medicine's Guidance Document 85-12 to present to the Board for consideration at its December meeting. The motion was seconded and passed.

Consider requiring a clinical examination similar to Ohio's for dental assistants II

Ms. Swain asked if discussion was needed since the Committee voted earlier not to recommend changes in the DA II regulations. Establishing a clinical examination was discussed with no action taken. Following further discussion, Ms. Reen suggested the Committee recommend that the Board establish a Regulatory Advisory Panel (RAP) of educator to discuss the DAII requirements. By consensus, all agreed.

VDA LEGISLATIVE PROPOSAL:

Ms. Reen stated the VDA proposal to modify the provisions for mobile dental clinics is provided for information. She explained the VDA requested the legislation to require registration and is now requesting an amendment to expand the entities exempt from registration requirements. Dr. Wyman moved to recommend that the Board, at its December meeting, decide to support this proposal. The motion was seconded and passed.

NEXT MEETING:

By consensus, the Committee decided to meet on Friday, February 12, 2016 if this date works for the RAP to address DAII requirements.

ADJOURNMENT:

With all business concluded, Ms. Swain adjourned the meeting at 12:42 p.m.

Melanie C. Swain, R.D.H., Chair	Sandra K. Reen, Executive Director
Date	Date

Department of Health Professions
2016 General Assembly

HB 310 Mobile dental clinics; exemption from registration requirements.
Chief patron: Orrock
Summary as introduced:
Mobile dental clinics; exemption from registration requirements. Adds to the list of mobile dental clinics exempt from the requirement to register with the Board of Dentistry mobile dental clinics operated by federally qualified health centers with a dental component that provides dental services via mobile model to children within 30 miles of the federally qualified health center and mobile dental clinics operated by free health clinics or health safety net clinics that have been granted tax-exempt status pursuant to §501(c)(3) of the Internal Revenue Code that provide dental services via mobile model to children within 30 miles of the free health clinic or health safety net clinic.
01/27/16 House: Read third time and passed House BLOCK VOTE (99-Y 0-N)
01/27/16 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N)
01/28/16 Senate: Constitutional reading dispensed
01/28/16 Senate: Referred to Committee on Education and Health
02/05/16 House: Impact statement from VDH (HB310H1)

HB 319 Health regulatory boards; continuing education for certain individuals.
Chief patron: Rasoul
Summary as introduced:
Volunteer health care providers. Authorizes the Department of Health to enter into written agreements with health care providers for the provision of health care services, without compensation, to low-income individuals receiving health services through a local health department or a health care facility licensed by the Department and operated by a nonprofit entity; provides that health care providers who have entered into such agreements shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff of the Department while acting within the scope of the volunteer agreement; and allows health care providers who provide health care services pursuant to such agreements to use such service to satisfy continuing education requirements.
02/01/16 House: Impact statement from VDH (HB319H1)
02/02/16 House: Read third time and passed House BLOCK VOTE (98-Y 0-N)
02/02/16 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)
02/03/16 Senate: Constitutional reading dispensed
02/03/16 Senate: Referred to Committee on Education and Health

HB 462 Administrative Process Act; contents of notices for case proceedings.
Chief patron: Head
Summary as introduced:
Administrative Process Act; contents of notices for case proceedings. Requires the notice for either an informal conference or a formal proceeding to include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party.
02/05/16 House: Read second time and engrossed
02/08/16 House: Read third time and passed House BLOCK VOTE (98-Y 0-N)
02/08/16 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)
02/09/16 Senate: Constitutional reading dispensed
02/09/16 Senate: Referred to Committee on General Laws and Technology

HB 499 Professions and occupations; standards for regulation.

Chief patron: Yancey
Summary as introduced:
Professions and occupations; standards for regulation. Provides that a professional and occupational regulatory board cannot abridge the right of every person to engage in any lawful profession, trade, or occupation of his choice unless (i) such board can demonstrate a compelling need for such abridgment for the protection or preservation of the health, safety, and welfare of the public and (ii) any such abridgment represents the least restrictive means to protect or preserve the public health, safety, and welfare, which may include the imposition of inspection requirements, bonding requirements, registration, or voluntary certification in lieu of licensure.
01/08/16 House: Prefiled and ordered printed; offered 01/13/16 16100731D
01/08/16 House: Referred to Committee on General Laws
01/18/16 House: Assigned to sub: Subcommittee #4
01/21/16 House: Impact statement from DPB (HB499)

HB 586 Health regulatory boards; confidentiality of certain information obtained by boards.
Chief patron: Yost
Summary as introduced:
Confidentiality of certain information obtained by health regulatory boards in disciplinary proceedings. Provides that in cases involving allegations that a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the health regulatory board may deem information related to (i) health services received by the practitioner as defined in §32.1-127.1:03, (ii) information derived from the health records, as defined in § 32.1-127.1:03, or (iii) any finding of fact that may indicate the practitioner's physical or mental illness confidential and include such information in a confidential exhibit to a notice or order that shall not be disclosed to the public.
02/05/16 House: Read third time and passed House BLOCK VOTE (97-Y 0-N)
02/05/16 House: VOTE: BLOCK VOTE PASSAGE (97-Y 0-N)
02/05/16 House: Impact statement from VDH (HB586H1)
02/08/16 Senate: Constitutional reading dispensed
02/08/16 Senate: Referred to Committee on Education and Health

HB 657 Prescription Monitoring Program; indicators of misuse, disclosure of information.
Chief patron: O'Bannon
Summary as introduced:
Prescription Monitoring Program; indicators of misuse; disclosure of information. Directs the Director of the Department of Health Professions to develop criteria for indicators of unusual patterns of prescribing or dispensing of covered substances by prescribers or dispensers and authorizes the Director to disclose information about the unusual prescribing or dispensing of a covered substance by an individual prescriber or dispenser to the Enforcement Division of the Department of Health Professions.
01/27/16 House: Read third time and passed House BLOCK VOTE (99-Y 0-N)
01/27/16 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N)
01/28/16 Senate: Constitutional reading dispensed
01/28/16 Senate: Referred to Committee on Education and Health
01/28/16 House: Impact statement from VDH (HB657E)

HB 800 Virginia Freedom of Information Act; audio recording of closed meetings required.
Chief patron: Morris
Summary as introduced:
Virginia Freedom of Information Act (FOIA); audio recording of closed meetings required. Provides that a public body shall (i) make an audio recording of the entirety of every meeting that is closed to the public; (ii) use a means of recording that fully captures and can clearly reproduce all

statements made during a closed meeting; and (iii) preserve the recording for a period of no less than two years. The bill provides that a recording made shall not be subject to the disclosure provisions of FOIA, but its production may be compelled, and the recording used as evidence, in a proceeding to enforce the provisions of FOIA.
02/09/16 House: Committee substitute printed 16104987D-H1
02/09/16 House: Reported from General Laws with substitute (11-Y 10-N)
02/09/16 House: Referred to Committee on Appropriations
02/10/16 House: Assigned App. sub: General Government & Capital Outlay
02/11/16 House: Impact statement from DPB (HB800H1)

HB 825 Military medical personnel; pilot program for personnel to practice medicine.
Chief patron: Stolle
Summary as introduced:
Military medical personnel; pilot program. Directs the Department of Veterans Services, in collaboration with the Department of Health Professions, to establish a pilot program in which military medical personnel may practice and perform certain delegated acts that constitute the practice of medicine under the supervision of a licensed physician or podiatrist. The bill requires the Department of Veterans Services to establish general requirements for participating in the program.
02/01/16 House: Passed by for the day
02/02/16 House: Read third time and passed House (97-Y 1-N)
02/02/16 House: VOTE: PASSAGE (97-Y 1-N)
02/03/16 Senate: Constitutional reading dispensed
02/03/16 Senate: Referred to Committee on Education and Health

HB 1044 Prescription Monitoring Program; disclosure of certain information.
Chief patron: Landes
Summary as introduced:
Prescription Monitoring Program; disclosures. Provides that the Director of the Department of Health Professions may disclose (i) information about a specific recipient contained in the Prescription Monitoring Program to a qualified licensed medical professional employed by the health plan of which the recipient is a member to identify potential misuse of covered substances by recipients for the purpose of intervention to prevent misuse and (ii) information about a specific dispenser or prescriber who participates in a health plan to a qualified licensed medical professional employed by that health plan to identify prescribing practices indicative of fraudulent activity.
02/09/16 House: Referred to Committee on Appropriations
02/09/16 House: Assigned App. sub: Health & Human Resources
02/09/16 House: Subcommittee recommends reporting (7-Y 0-N)
02/10/16 House: Impact statement from VDH (HB1044H1)
02/10/16 House: Reported from Appropriations with substitute (22-Y 0-N)

HB 1292 Schedule IV drugs; adds eluxadoline to list.
Chief patron: Pillion
Summary as introduced:
Schedule IV drugs; eluxadoline. Adds eluxadoline to the list of Schedule IV drugs.
02/04/16 House: Subcommittee recommends reporting (6-Y 0-N)
02/05/16 House: Impact statement from VDH (HB1292)
02/08/16 House: Reported from Appropriations (22-Y 0-N)
02/10/16 House: Read first time
02/11/16 House: Passed by for the day

HB 1388 State agencies; review of potential anti-competitive actions and promulgation of regulations.
Chief patron: McClellan
Summary as introduced:
Review of potential anti-competitive actions of state agencies, and promulgation of regulations.
01/22/16 House: Presented and ordered printed 16104691D
01/22/16 House: Referred to Committee on General Laws
02/01/16 House: Assigned to sub: Subcommittee #4
02/09/16 House: Impact statement from DPB (HB1388)

SB 207 Administrative Process Act; reconsideration of formal hearings, litigated issues, report.
Chief patron: Edwards
Summary as introduced:
Administrative Process Act; reconsideration of formal hearings. Provides a procedure for a party to file a petition for reconsideration of an agency's decision from a formal hearing under the Administrative Process Act (APA). The bill requires the agency to render a written decision on a party's timely petition for reconsideration within 30 days and may deny the petition, modify the decision, or vacate the decision and set a new hearing for further proceedings. The agency shall state the reasons for its action. The bill also provides for the reconsideration of other decisions of a policy-making board of a state agency. If reconsideration is sought for the decision of a board, the board may (i) consider the petition for reconsideration at its next regularly scheduled meeting, (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt, or (iii) delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the state agency that provides administrative support to the board. The bill is the recommendation of the Administrative Law Advisory Committee and has been approved by the Virginia Code Commission.
01/29/16 Senate: Read third time and passed Senate (23-Y 16-N)
01/29/16 Senate: Impact statement from DPB (SB207ES1)
02/03/16 House: Placed on Calendar
02/03/16 House: Read first time
02/03/16 House: Referred to Committee on General Laws

SB 343 Cancer; possession or distribution of marijuana for medical purposes.
Chief patron: Lucas
Summary as introduced:
Possession or distribution of marijuana for medical purposes; cancer. Provides an affirmative defense in a prosecution for the possession of marijuana if the marijuana is in the form of cannabidiol oil or THC-A oil possessed pursuant to a valid written certification issued by a practitioner of medicine or osteopathy licensed by the Board of Medicine for purposes of treating cancer or alleviating such patient's symptoms. The bill provides that a practitioner shall not be prosecuted for distribution of marijuana under the circumstances outlined in the bill.
02/09/16 Senate: Passed by temporarily
02/09/16 Senate: Read third time and passed Senate (38-Y 2-N)
02/11/16 House: Placed on Calendar
02/11/16 House: Read first time
02/11/16 House: Referred to Committee for Courts of Justice

SB 491 Prescription Monitoring Program; disclosure of certain information.
Chief patron: Hanger
Summary as introduced:
Prescription Monitoring Program; disclosures. Provides that the Director of the Department of Health Professions may disclose (i) information about a specific recipient contained in the Prescription

Monitoring Program to a qualified licensed medical professional employed by the health plan of which the recipient is a member to identify potential misuse of covered substances by recipients for the purpose of intervention to prevent misuse and (ii) information about a specific dispenser or prescriber who participates in a health plan to a qualified licensed medical professional employed by that health plan to identify prescribing practices indicative of fraudulent activity.
02/08/16 Senate: Engrossed by Senate - committee substitute SB491S1
02/09/16 Senate: Read third time and passed Senate (40-Y 0-N)
02/11/16 House: Placed on Calendar
02/11/16 House: Read first time
02/11/16 House: Referred to Committee on Health, Welfare and Institutions

SB 513 Prescription Monitoring Program; requirements of prescribers of opiates.
Chief patron: Dunnavant
Summary as introduced:
Prescription Monitoring Program; requirements of prescribers of benzodiazepine or opiates. Changes the time at which a prescriber prescribing benzodiazepine or opiates must request information from the Prescription Monitoring Program from the time the course of treatment is initiated to prior to prescribing the benzodiazepine or opiate and requires a prescriber whose prescribing of benzodiazepine or an opiate continues for more than 90 days after the date of the initial prescription to request information about the recipient from the Director of the Department of Health Professions at least once every 90 days until the course of treatment has ended. The bill creates an exemption from these requirements if (i) benzodiazepine or opiate is prescribed to a patient currently receiving hospice or palliative care; (ii) benzodiazepine or opiate is prescribed to a patient as part of treatment for a surgical procedure, provided that such prescription is not refillable; or (iii) the Prescription Monitoring Program is not operational or available due to temporary technological or electrical failure or natural disaster. The bill eliminates an exception for cases in which the prescriber prescribes benzodiazepines or opiates that have been identified by the Secretary of Health and Human Resources as having a low potential for abuse by human patients. This bill includes a sunset of July 1, 2019.
02/09/16 Senate: Read third time and passed Senate (40-Y 0-N)
02/10/16 Senate: Impact statement from VDH (SB513S2)
02/11/16 House: Placed on Calendar
02/11/16 House: Read first time
02/11/16 House: Referred to Committee on Health, Welfare and Institutions

SB 712 Dental hygienists; remote supervision.
Chief patron: McDougle
Summary as introduced:
Dental hygienists; remote supervision. Authorizes dental hygienists to practice, with certain requirements and restrictions, under the remote supervision of a licensed dentist. The bill directs the Board of Dentistry to promulgate regulations to implement the provisions of the act within 280 days of its enactment.
02/02/16 Senate: Read third time and passed Senate (39-Y 0-N)
02/05/16 House: Placed on Calendar
02/05/16 House: Read first time
02/05/16 House: Referred to Committee on Health, Welfare and Institutions
02/05/16 Senate: Impact statement from VDH (SB712)

SB 746 Governmental entities; liability for certain inspections.
Chief patron: Wagner
Summary as introduced:
Personal liability of government employees for certain inspections. Provides that a government

employee who exceeds the scope of his authority when performing an inspection of a private entity to determine compliance with any law, regulation, or ordinance shall be personally liable for any damages arising from any enforcement action taken against the entity on the basis of the employee's inspection. The provisions of this bill do not apply to law-enforcement officers.
02/10/16 Senate: Reading of substitute waived
02/10/16 Senate: Committee substitute agreed to 16105331D-S1
02/10/16 Senate: Engrossed by Senate - committee substitute SB746S1
02/11/16 Senate: Previous question ordered (23-Y 15-N 1-A)
02/11/16 Senate: Read third time and passed Senate (24-Y 16-N)

16103968D

SENATE BILL NO. 712

Offered January 21, 2016

A BILL to amend and reenact §§ 54.1-2722 and 54.1-2724 of the Code of Virginia, relating to dental hygienists; practicing under remote supervision.

Patrons—McDougle; Delegates: Hester and Peace

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2722 and 54.1-2724 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2722. License; application; qualifications; practice of dental hygiene.

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of a dental hygiene program accredited by the Commission on Dental Accreditation and offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient. Pursuant to subsection V of § 54.1-3408, a licensed dental hygienist may administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be present in the facility while the authorized services are being provided.

~~For the purposes of this section, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have done an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.~~

The Board shall provide for an inactive license for those dental hygienists who hold a current, unrestricted license to practice in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. *For the purposes of this subsection, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.*

Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of Health who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Commonwealth under the remote supervision of a dentist employed by the Department of Health. A dental hygienist providing such services shall practice pursuant to a protocol adopted by

59 the Commissioner of Health on September 23, 2010, having been developed jointly by (i) the medical
60 directors of the Cumberland Plateau, Southside, and Lenowisco Health Districts; (ii) dental hygienists
61 employed by the Department of Health; (iii) the Director of the Dental Health Division of the
62 Department of Health; (iv) one representative of the Virginia Dental Association; and (v) one
63 representative of the Virginia Dental Hygienists' Association. Such protocol shall be adopted by the
64 Board as regulations.
65 ~~F.~~ A report of services provided by dental hygienists pursuant to such protocol, including their
66 impact upon the oral health of the citizens of the Commonwealth, shall be prepared and submitted by
67 the Department of Health to the Virginia Secretary of Health and Human Resources annually. Nothing
68 in this section shall be construed to authorize or establish the independent practice of dental hygiene.
69 *F. For the purposes of this subsection, "remote supervision" means that a dentist is accessible and*
70 *available for communication and consultation with a dental hygienist employed by such dentist during*
71 *the delivery of dental hygiene services but such dentist may not have conducted an initial examination of*
72 *the patients who are to be seen and treated by the dental hygienist and may not be present with the*
73 *dental hygienist when dental hygiene services are being provided.*
74 *Notwithstanding any other provision of law, a dental hygienist may practice dental hygiene under the*
75 *remote supervision of a dentist who holds an active, unrestricted license by the Board and who has a*
76 *dental office physically located in the Commonwealth. No dental hygienist shall practice under remote*
77 *supervision unless he has (i) completed a continuing education course offered by an accredited dental*
78 *education program or from a continuing education provider approved by the Board and (ii) at least two*
79 *years of clinical experience, consisting of at least 2,500 hours of clinical experience. A dental hygienist*
80 *practicing under remote supervision shall have professional liability insurance with policy limits*
81 *acceptable to the supervising dentist. A dental hygienist shall only practice under remote supervision at*
82 *a community health center, charitable safety net facility, free clinic, long-term care facility, elementary*
83 *or secondary school, Head Start program, or women, infants, and children program.*
84 *A dental hygienist practicing under remote supervision may (a) obtain a patient's treatment history*
85 *and consent, (b) perform an oral assessment, (c) perform scaling and polishing, (d) perform all*
86 *educational and preventative services, (e) take X-rays as ordered by the supervising dentist or consistent*
87 *with a standing order, (f) maintain appropriate documentation in the patient's chart, (g) administer*
88 *topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a*
89 *doctor of medicine or osteopathic medicine pursuant to subsection V of §54.1-3408, and (h) perform any*
90 *other service ordered by the supervising dentist or required by statute or Board regulation. No dental*
91 *hygienist practicing under remote supervision shall administer local anesthetic or nitrous oxide.*
92 *Prior to providing a patient dental hygiene services, a dental hygienist practicing under remote*
93 *supervision shall obtain (1) the patient's or the patient's legal representative's signature on a statement*
94 *disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for*
95 *the need for regular dental examinations by a dentist and (2) verbal or written permission of any dentist*
96 *who has treated the patient in the previous 12 months and can be identified by the patient.*
97 *After conducting an initial oral assessment of a patient, a dental hygienist practicing under remote*
98 *supervision shall consult with the supervising dentist prior to providing further dental hygiene services if*
99 *such patient is medically compromised or has periodontal disease.*
100 *A dental hygienist practicing under remote supervision shall inform the supervising dentist of all*
101 *findings for a patient. A dental hygienist practicing under remote supervision may continue to treat a*
102 *patient for 90 days. After such 90-day period, the supervising dentist, absent emergent circumstances,*
103 *shall either conduct an examination of the patient or refer the patient to another dentist to conduct an*
104 *examination. The supervising dentist shall develop a treatment plan for the patient and either the*
105 *supervising dentist or the dental hygienist shall provide the treatment plan to the patient. The*
106 *supervising dentist shall review a patient's records at least once every 10 months.*
107 *Nothing in this subsection shall prevent a dental hygienist from practicing dental hygiene under*
108 *general supervision whether as an employee or as a volunteer.*
109 **§ 54.1-2724. Limitations on the employment of dental hygienists.**
110 The Board shall determine by regulation ~~how many~~ *the total number of* dental hygienists, *including*
111 *dental hygienists under general supervision and dental hygienists under remote supervision, who* may
112 work at one time for a dentist. *No dentist shall employ more than two dental hygienists who practice*
113 *under remote supervision at one time.* The State Board of Health may employ the necessary number of
114 hygienists in public school dental clinics, subject to regulations of the Board.
115 **2. That the Board of Dentistry shall promulgate regulations to implement the provisions of this act**
116 **to be effective within 280 days of its enactment.**

2016 SESSION

HOUSE SUBSTITUTE

16104226D

HOUSE BILL NO. 319

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions on January 28, 2016)

(Patron Prior to Substitute—Delegate Rasoul)

A BILL to amend and reenact § 54.1-2400 of the Code of Virginia, relating to continuing education requirements; volunteer health services.

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2400 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

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

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

3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.

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

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) ~~which~~ *that* are reasonable and necessary to administer effectively the regulatory system, *which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services*. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) ~~of this title~~.

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

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

9. To take appropriate disciplinary action for violations of applicable law and regulations, and to accept, in their discretion, the surrender of a license, certificate, registration or multistate licensure privilege in lieu of disciplinary action.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, permit or multistate licensure privilege in nursing. The special conference committee may (i) exonerate; (ii) reinstate; (iii) place the practitioner or permit holder on probation with such terms as it may deem appropriate; (iv) reprimand; (v) modify a previous order; (vi) impose a monetary penalty pursuant to § 54.1-2401, (vii) deny or grant an application for licensure, certification, registration, permit, or multistate licensure privilege; and (viii) issue a restricted license, certification, registration, permit or multistate licensure privilege subject to terms and conditions. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall

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60 then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated.
61 This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately
62 qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding
63 proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be
64 subject to a disciplinary action. The recommendation of such subordinate may be considered by a panel
65 consisting of at least five board members, or, if a quorum of the board is less than five members,
66 consisting of a quorum of the members, convened for the purpose of issuing a case decision. Criteria for
67 the appointment of an agency subordinate shall be set forth in regulations adopted by the board.
68 11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum
69 of the board is less than five members, consisting of a quorum of the members to conduct formal
70 proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any
71 decision rendered by majority vote of such panel shall have the same effect as if made by the full board
72 and shall be subject to court review in accordance with the Administrative Process Act. No member who
73 participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel
74 conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.
75 12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose.
76 Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for
77 reactivation of licenses or certificates.
78 13. To meet by telephone conference call to consider settlement proposals in matters pending before
79 special conference committees convened pursuant to this section, or matters referred for formal
80 proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or to consider
81 modifications of previously issued board orders when such considerations have been requested by either
82 of the parties.
83 14. To request and accept from a certified, registered or licensed practitioner or person holding a
84 multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent
85 agreement. A confidential consent agreement shall be subject to the confidentiality provisions of
86 § 54.1-2400.2 and shall not be disclosed by a practitioner. A confidential consent agreement shall
87 include findings of fact and may include an admission or a finding of a violation. A confidential consent
88 agreement shall not be considered either a notice or order of any health regulatory board, but it may be
89 considered by a board in future disciplinary proceedings. A confidential consent agreement shall be
90 entered into only in cases involving minor misconduct where there is little or no injury to a patient or
91 the public and little likelihood of repetition by the practitioner. A board shall not enter into a
92 confidential consent agreement if there is probable cause to believe the practitioner has (i) demonstrated
93 gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a
94 manner as to be a danger to the health and welfare of his patients or the public. A certified, registered
95 or licensed practitioner who has entered into two confidential consent agreements involving a standard
96 of care violation, within the 10-year period immediately preceding a board's receipt of the most recent
97 report or complaint being considered, shall receive public discipline for any subsequent violation within
98 the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the
99 presumption that the disciplinary action be made public.
100 15. When a board has probable cause to believe a practitioner is unable to practice with reasonable
101 skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the
102 board, after preliminary investigation by an informal fact-finding proceeding, may direct that the
103 practitioner submit to a mental or physical examination. Failure to submit to the examination shall
104 constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded
105 reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to
106 patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate
107 licensure privilege to practice nursing.
108 **2. That the provisions of this act shall become effective on January 1, 2017.**

Virginia Board of Dentistry

Compilation of Provisions in the Code of Virginia Addressing Dental Practice, Practice of Dentistry by Professional Business Entities, and Practice Locations and the Duties Restricted to Dentists in the Regulations Governing the Practice of Dentistry

Dental Practice

- **§54.1-2700** - "Dentistry" means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent and associated structures and their impact on the human body.
- **§54.1-2711** - Any person shall be deemed to be practicing dentistry who
  (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any way represents him as engaged in the practice of dentistry;
  (ii) holds himself out, advertises or permits to be advertised that he can or will perform dental operations of any kind;
  (iii) diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents or contiguous structures, or
  (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes impressions for the fabrication of appliances or dental prosthesis, supplies or repairs artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes.

  No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist.

Practice of Dentistry by Professional Business Entities

- **§54.1-2717** - A. No corporation shall be formed or foreign corporation domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional corporation as permitted by Chapter 7 (§ 13.1-542 et seq.) of Title 13.1.
  B. No limited liability company shall be organized or foreign limited liability company domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional limited liability company as permitted by Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1.
  C. Notwithstanding the provisions of subsections A and B, dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A of § 54.1-2715.
- **§54.1-2718** - A. No person shall practice, offer to practice, or hold himself out as practicing dentistry, under a name other than his own. This section shall not prohibit the practice of dentistry by a partnership under a firm name, or a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a firm name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified in subsection A of § 54.1-2715.

B. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:
1. The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist's name.
2. Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.
3. The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.

Practice Locations

- **§ 54.1-2708.3 -** No person shall operate a mobile dental clinic or other portable dental operation without first registering such mobile dental clinic or other portable dental operation with the Board, except that mobile dental clinics or other portable dental operations operated by federal, state, or local government agencies or other entities identified by the Board in regulations shall be exempt from such registration requirement.
- **§54.1-2709.4.B(4)** – requires health care institutions licensed by the Commonwealth to report any type of disciplinary action taken against an oral and maxillofacial surgeon.
- **§54.1-2711.1** – Temporary licenses for persons enrolled in advanced dental education programs authorize the holder to perform patient care activities associated with the program in which he is enrolled that take place only within educational facilities owned or operated by, or affiliated with, the dental school or program. Temporary licenses issued pursuant to this section shall not authorize a licensee to practice dentistry in nonaffiliated clinics or private practice settings.
- **§54.1-2712(3) -**
- **§54.1-2712.1.B(1)** - A person holding a restricted volunteer license under this section shall only practice in public health or community free clinics that provide dental services to underserved populations.
- **§54.1-2713.C** – a faculty license permits the holder to perform all activities that a person licensed to practice dentistry would be entitled to perform and that are part of his faculty duties, including all patient care activities associated with teaching, research, and the delivery of patient care, which take place only within educational facilities owned or operated by or affiliated with the dental school or program.
- **§54.1-2715** - temporary permits may be issued to dentists who serve as clinicians in dental clinics operated by:
  (a) the Virginia Department of Corrections,
  (b) the Virginia Department of Health,
  (c) the Virginia Department of Behavioral Health and Developmental Services, or

(d) a Virginia charitable corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services:
(i) as a federal qualified health center designated by the Centers for Medicare and Medicaid Services or
(ii) at a reduced or sliding fee scale or without charge.

- **§54.1-2716** - It shall be unlawful for any dentist to practice his profession in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice dentistry in such commercial or mercantile establishment. This section shall not prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by a dentist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any dentist who violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities or services unrelated to the practice of dentistry or the other healing arts.

Duties Restricted to Dentists by Regulation

- **18VAC60-21-60.A** - A dentist is responsible for conducting his practice in a manner that safeguards the safety, health, and welfare of his patients and the public by…
- **18VAC60-21-90.A** - A dentist shall maintain complete, legible, and accurate patient records for not less than six years from the last date of service for purposes of review by the board…
- **18VAC60-21-110** - A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services, additional dental hygienists to practice under general supervision in a free clinic or a public health program, or on a voluntary basis.
- **18VAC60-21-120** - A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter and the Code.
- **18VAC60-21-130** - Only licensed dentists shall perform the following duties:
  1. Final diagnosis and treatment planning;
  2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;
  3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-25-100, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
  4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;
  5. Operation of high speed rotary instruments in the mouth;
  6. Administering and monitoring conscious/moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and Part VI (18VAC60-21-260 et seq.) of this chapter;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;
8. Final positioning and attachment of orthodontic bonds and bands; and
9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

DRAFT

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF VIRGINIA

1992 Va. AG LEXIS 66; 1992 Op. Atty Gen. Va. 147

December 7, 1992

REQUESTBY:

[*1] The Honorable Robert S. Bloxom
Member, House of Delegates
Box 27
Mappsville, Virginia 23407

OPINIONBY:
Mary Sue Terry, Attorney General

OPINION:

You ask whether a proposed agreement between a hospital and an orthopedic surgeon, under which the surgeon would be employed directly by the hospital as a full-time member of its medical staff, would violate any of the provisions of *Title 54.1* of the *Code of Virginia* pertaining to the practice of medicine. You also ask whether the proposed employment is prohibited by statutes pertaining to professional corporations.

I. Facts

A nonstock, nonprofit corporation operates Northampton-Accomack Memorial Hospital (the "Hospital") in Nassawaddox, Virginia. The Hospital services two Eastern Shore counties, both of which have widely dispersed populations and a relatively high percentage of patients who are indigent or whose medical services are paid for by government programs. The closest other hospitals are 75 miles to the north, in Maryland, and 55 miles to the south, across the Chesapeake Bay. You state that the Hospital's rural location has hampered its efforts to recruit physicians, particularly specialists.

Under the proposed agreement, the Hospital [*2] would employ an orthopedic surgeon, licensed by the Commonwealth to practice medicine, as a full-time member of its medical staff. This physician would be paid a salary by the Hospital. The Hospital would bill patients for the physician's services and would retain all amounts collected. The physician would be permitted to exercise independent professional judgment and would be solely responsible both for the medical care of patients and for the supervision of any "technical" employees of the Hospital who assist the physician in rendering medical services. I assume that these "technical" employees could include unlicensed individuals who administer various diagnostic tests and treatments ordered by physicians in accordance with Hospital protocols.

II. Applicable Statutes

A. Practice of Medicine

Articles 1 through 6, Chapter 29 of *Title 54.1*, containing §§ 54.1-2900 through 54.1-2973, define the practice of medicine and other specialties regulated by the Board of Medicine (the "Board"), establish eligibility requirements for licensure in the Commonwealth and detail the unprofessional conduct that may subject a licensee of the Board to professional discipline. Generally, [*3] the "'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." Section 54.1-2900. Section 54.1-2901(6) provides that personnel employed by a physician, to whom the physician delegates nondiscretionary duties for which the physician assumes responsibility, are expressly excluded from

the definition of the practice of medicine and thus from the licensing requirements in Chapter 29. Sections 54.1-2902 and 54.1-2929 make it unlawful to practice medicine without a license.

Section 54.1-2903 defines the practice of medicine as follows:

Any person shall be regarded as practicing the healing arts who actually engages in such practice as defined in this chapter, or who opens an office for such purpose, or who advertises or announces to the public in any manner a readiness to practice or who uses in connection with his name the words or letters "Doctor," "Dr.," "M.D.," "D.O.," "D.P.M.," "D.C.," "Healer," "Physical Therapist," "R.P.T.," "P.T.," "L.P.T.A.," "Clinical Psychologist," or any other title, word, letter or designation intending to designate [*4] or imply that he is a practitioner of the healing arts or that he is able to heal, cure or relieve those suffering from any injury, deformity or disease.

Section 54.1-2964 defines certain standards of medical practice:

A. Any practitioner of the healing arts shall, prior to referral of a patient to any facility or entity engaged in the provision of health-related services, appliances or devices, including but not limited to physical therapy, hearing testing, or sale or fitting of hearing aids or eyeglasses provide the patient with a notice in bold print that discloses any known material financial interest of or ownership by the practitioner in such facility or entity and states that the services, appliances or devices may be available from other suppliers in the community. In making any such referral, the practitioner of the healing arts may render such recommendations as he considers appropriate, but shall advise the patient of his freedom of choice in the selection of such facility or entity. This section shall not be construed to permit any of the practices prohibited in § 54.1-2914.

Section 54.1-2914 details the grounds on which a physician may be considered guilty of unprofessional [*5] conduct. The division of fees between surgeons and other physicians is prohibited by § 54.1-2962. Section 54.1-2962.1 provides:

No practitioner of the healing arts shall knowingly and willfully solicit or receive any remuneration directly or indirectly, in cases or in kind, in return for referring an individual or individuals to a facility or institution as defined in § 37.1-179 or a hospital as defined in § 32.1-123. The Board shall adopt regulations as necessary to carry out the provisions of this section. Such regulations shall exclude from the definition of "remuneration" any payments, business arrangements, or payment practices not prohibited by Title 42, Section 1320a-7b (b) of the United States Code, as amended, or any regulations promulgated pursuant thereto. The federal statute to which § 54.1-2962.1 refers provides that the prohibition against receiving remuneration for patient referrals shall not apply to "any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services." *42 U.S.C. § 1320a-7b*(b)(3)(B).

B. Professional Corporations

Professional corporations [*6] are organized under Chapter 7 of *Title 13.1*, §§ 13.1-542 through 13.1-556.

A "professional corporation" is defined in § 13.1-543(B) as

(i) a corporation which is organized under this chapter for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this Commonwealth to render the same professional service as the corporation; or . . . (iii) a corporation which is organized under this chapter or under Chapter 10 [pertaining to nonstock corporations] of this title for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 of *Title 54.1* . . . and all of whose shares are held by or all of whose members are persons duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts. . . .

Licensed professionals may organize and become shareholders in a professional corporation for pecuniary profit and may become members of a nonstock corporation for the "sole and specific purpose of rendering the same and specific [*7] professional service, subject to any laws, not inconsistent with the provisions of this chapter, which are applicable to the practice of that profession in the corporate form." Section 13.1-544.

Section 13.1-546 provides:

No corporation organized and incorporated under this chapter may render professional services except through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this Commonwealth. . . .

III. "Corporate Practice of Medicine" Doctrine Precluding Hospital Corporation's Employment of Physician Not Adopted in Virginia Statute or Court Decision

The courts in a number of other states have developed what is known as the "corporate practice of medicine" doctrine, holding that, since a corporation may not lawfully practice medicine, a corporation may not employ a doctor as an agent to practice medicine for it. Under the doctrine, a physician hired by the corporation would also be unlawfully practicing medicine. *See, e.g., Dr. Allison, Dentist, Inc. v. Allison, 360 Ill. 638, 196 N.E. 799 (1935); Parker v. Board of Dental Examiners, 216 Cal. 285, 14 P.2d 67 (1932); see also* [*8] *Rockett v. Texas State Board of Medical Examiners, 287 S.W.2d 190 (Tex. Civ. App. 1956).* Those decisions were influenced primarily by statutory and public policy concerns that the medical community could be subject to commercial exploitation that would result in divided loyalties, motivated by profit and improper lay control over professional decisions. These concerns generally were allayed by structuring contractual relationships in which the physician maintains an "independent contractor" status with the hospital and sole control over diagnosis and treatment of the patient. Although there is no court decision or statute in Virginia adopting the "corporate practice of medicine" doctrine, n1 many Virginia hospitals desiring to retain physicians' services have contracted with physicians as independent contractors. *See, e.g., Stuart Circle Hosp. Corp. v. Curry, 173 Va. 136, 3 S.E.2d 153 (1939);* 1954-1955 ATT'Y GEN. ANN. REP. 146.

n1 The fact that Virginia does not adhere strictly to the "corporate practice of medicine" doctrine has been recognized by the *Report of the Department of Health and the Department of Health Professions on Commercial Walk-In Medical Clinics in the Commonwealth:* "The [American Medical Association] encourages states to consider prohibitions on the 'corporate practice of medicine,' but in the view of the Task Force the use of the state's regulatory authority to restrict physicians from affiliating with commercial corporations may invite federal scrutiny under antitrust provisions of the Sherman and Federal Trade Commission Acts. In Virginia, statutes prohibiting physician practice in connection with commercial or mercantile establishments were repealed in 1986." 2 H. & S. DOCS., H. DOC. NO. 45, at 18 (1990 Sess.). Under one such repealed statute, § 54-278.1, it was unlawful for a physician to practice "as a lessee of any commercial or mercantile establishment." VA. CODE ANN. *id.* (Michie Repl. Vol. 1982).

Arguments favoring the existence of the "corporate practice of medicine" doctrine in Virginia are predicated only on inference. First, proponents of the doctrine infer its existence from the fact that only an individual, and not a corporation, may be licensed to practice medicine. That fact, however, does not preclude a corporation from employing a licensed individual. *See* §§ 54.1-2901, 54.1-2902.

Second, proponents of the doctrine note that § 38.2-4319(C) states: "A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law." There is, however, another explanation for this statutory language. Health maintenance organizations ("HMOs") arrange, pay for or reimburse costs of health care services for its members or enrollees. *See* § 38.2-4303. Without the exception in § 38.2-4319(C), HMO enrollees or their physicians might argue that a refusal of an HMO's agent, presumably unlicensed, to authorize reimbursement for certain medical services, such as extra days of hospitalization for a routine operation, constitutes the unlawful practice of medicine by an unlicensed person.

Third, proponents of the "corporate practice of medicine" doctrine cite § 54.1-2941, which provides express authority for state-owned medical care institutions to employ licensed practitioners, and infer from this language that other institutions may not do so. However, § 54.1-2941 was enacted before the repeal of other statutes prohibiting physician practice in commercial or mercantile establishments that might have been construed to prohibit corporate employment of physicians. Moreover, the Commonwealth may have a different relationship with patients at state institutions than private hospitals have with their patients. Without the express authority for state employment of physicians in § 54.1-2941, patients treated in state facilities might claim their physicians had a conflict of interests. This concern underscores the importance of all licensees' maintaining their independent professional judgment, whether employed in state or private institutions, but § 54.1-2941 does not preclude private hospitals from employing licensed physicians under appropriate circumstances.

Further, Virginia's professional corporation statutes, §§ 13.1-542 through 13.1-556, apply to professions in addition to those practicing the healing arts, and the availability of this corporate form has multiple purposes. It would be overreaching to conclude that the statutory framework for professional corporations precludes nonprofessional corporations from employing physicians. Indeed, other statutes illustrate the General Assembly's

willingness to prohibit employment relationships for other health care professionals. *See, e.g.,* §§ 54.1-3205, 54.1-3205.1, 54.1-2716 to 54.1-2718 (expressly prohibiting commercial or mercantile employment of optometrists and dentists). If the General Assembly had intended to impose a similar prohibition on corporate employment of physicians, it could have done so in the same express manner.

[*9]

IV. Professional Corporation Statutes Permit Properly Licensed Employee to Practice Medicine

In Virginia, a licensed professional, such as a physician, may become a member of a nonstock corporation organized to render professional services. Section 13.1-544. Such a professional corporation likewise has specific statutory authority to employ other persons licensed in the same profession to provide professional services. *See* § 13.1-546.

From the facts you provide, it is not clear whether the nonstock corporation operating the Hospital is a "professional corporation" as defined in § 13.1-543(B) or, if so, whether the physician will be a member of such a professional corporation. If those are the circumstances, the Hospital clearly has authority to employ the physician. According to a recent opinion of the Supreme Court of Virginia, however, § 13.1-546 "does not allow a professional corporation to render professional services through an independent contractor." *Palumbo v. Bennett, 242 Va. 248, 251, 409 S.E.2d 152, 153 (1991).* n2

n2 In *Palumbo,* the Court held that, although a contract defining a physician as an independent contractor violated the statute, the contract might not be unenforceable. Although the Court recognized that "certain professionals [may] render professional services as officers, employees, or agents of a professional corporation." *242 Va. at 252, 409 S.E. 2d at 154,* the Court apparently did not consider an independent contractor to be an "agent" of the professional corporation for purposes of § 13.1-546 under the facts of that case.

[*10]

V. Physician May Perform Professional Services for Nonprofessional Corporation as Employee if Professional Independence Guaranteed

A prior Opinion of this Office concludes that a foundation organized as a nonstock, nonprofit corporation that has no members may employ physicians to provide medical care, and not be deemed to be practicing medicine unlawfully, as long as the physicians' exercise of professional judgment is not controlled or influenced in any way by the corporation. 1989 ATT'Y GEN. ANN. REP. 283, 285. n3

n3 An earlier Opinion of the Attorney General concludes that, under the medical licensure statutes in effect in 1955, a hospital which employed a physician might be engaging in the practice of medicine if there was a direct patient-physician relationship, but the hospital billed the patient for the physician's services. That Opinion further concludes that a physician having direct access to the patient should have billed that patient directly. Conversely, the hospital could bill for the services of a radiologist who provided support services for a patient, but did not have direct patient contact. That Opinion also concludes that a determination of what constitutes the practice of medicine must be made on a case-by-case basis. 1954-1955 ATT'Y GEN. ANN. REP. 146, 147. Under the current statutes, with more complex corporate structures now in use, sophisticated professional specialties, and more complicated liability issues, it is my opinion that this determination is more properly based on the physician's retention of professional judgment, rather than on the extent of his patient access or billing.

[*11]

You indicate that the proposed employment agreement between the physician and the Hospital will give the physician exclusive control over decisions requiring professional medical judgment. Even though the physician is an employee of the Hospital, therefore, it is my opinion that the Hospital will not be engaging in the unlawful practice of medicine merely by paying a salary to the physician.

You also state that the proposed agreement would give the physician supervisory responsibility for unlicensed technical employees of the Hospital. Under § 54.1-2901(6), unlicensed individuals in the personal employ of a physician to whom the physician delegates nondiscretionary duties are expressly excluded from the definition of the practice of medicine. In the facts you present, however, the technical personnel would be employees of the Hospital, although su-

pervised by the physician. Because the activities of these employees would not automatically be excluded from the definition of the practice of medicine, these unlicensed individuals must not engage in practices for which licensure is required. *See also* § 54.1-111.

VI. Conclusion

Based on the above, it is my opinion that [*12] Virginia statutes and court decisions allow the Hospital to retain the physician as an employee, as long as the agreement authorizes the physician to exercise control over the diagnosis and treatment of the patient, the physician's professional judgment is not improperly influenced by commercial or lay concerns and the physician-patient relationship is not altered.

Legal Topics:

For related research and practice materials, see the following legal topics:
Antitrust & Trade LawIndustry RegulationProfessional Associations & Higher EducationGeneral OverviewBusiness & Corporate LawProfessional Associations & CorporationsHealthcare LawActions Against Healthcare WorkersGeneral Overview