

Advisory Board on Genetic Counseling

Virginia Board of Medicine

May 23, 2022

1:00 p.m.

Advisory Board on Genetic Counseling

Board of Medicine

Monday, May 23, 2022 @ 1:00 p.m.

9960 Mayland Drive, Suite 201

Henrico, VA

	Page
Call to Order – Tahnee Causey, CGC - Chair	
Emergency Egress Procedures – William Harp, MD	i
Roll Call – Delores Cousins	
Approval of Minutes of October 4, 2021	1 - 4
Adoption of the Agenda	
Public Comment on Agenda Items (15 minutes)	
New Business	
1. Legislative Update from the 2022 General Assembly Erin Barrett	5
2. Discuss Failed Certification Examination and Temporary Licensure Tahnee Causey	-- --
3. Consider Adoption of Bylaws Dr. Harp	6 - 8

Announcements:

Next Scheduled Meeting: September 19, 2022 @ 1:00 p.m.

Adjournment

**PERIMETER CENTER CONFERENCE CENTER
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS**

Training Room 2

Exit the room using one of the doors at the back of the room. **(Point)** Upon exiting the doors, turn **LEFT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

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ADVISORY BOARD ON GENETIC COUNSELING

Minutes

October 4, 2021

The Advisory Board on Genetic Counseling met on Monday, October 4, 2021 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Henrico, Virginia.

MEMBERS PRESENT: Lori Swain - Chair
Tahnee Causey, GC - Vice-Chair
Marilyn Foust, MD
Lydia Higgs, GC

MEMBERS ABSENT: Martha Thomas, GC

STAFF PRESENT: William L. Harp, MD, Executive Director
Michael Sobowale, LLM, Deputy Director, Licensure
Elaine Yeatts, DHP Senior Policy Analyst
Colanithia Opher, Deputy Director, Administration
Delores Cousins, Licensing Specialist

GUESTS PRESENT: None

Call to Order

Lori Swain, Chair, called the meeting to order at 1p.m.

Emergency Egress Procedures

Dr. Harp announced the emergency egress instructions.

Roll Call

Roll was called; a quorum was declared.

Introduction of Members and Staff

Dr. Harp asked Board staff and the Advisory Board members to introduce themselves.

Approval of Minutes

Marilyn Foust moved to adopt the minutes of the October 5, 2020 meeting. Tahnee Causey seconded the motion. By unanimous vote, they were approved as presented.

Adoption of Agenda

Tahnee Causey moved to adopt the agenda. Marilyn Foust seconded the motion. By unanimous vote, the agenda was adopted.

Public Comment on Agenda Items

None

New Business

1. 2021 Legislative Update and 2022 Proposals

Dr. Harp provided an update on legislative actions from the 2021 General Assembly that held interest to members and spoke to 2022 legislative proposals.

2. Report of Regulatory Actions

Dr. Harp gave the report in Elaine Yeatts' absence. He made special mention of the repeal of the conscience clause for genetic counselors by the 2021 General Assembly. Conforming the regulations to the Code will be an exempt regulatory action.

3. Review of Licensure Requirements

Michael Sobowale said this topic was placed on the Advisory Board's agenda at the request of the Credentials Committee for the Advisory Board to review the licensing requirements and application questions to determine if they can be further streamlined. The Credentials Committee met on September 20, 2021 to review and recommend which documents required in the licensing process should be primary-source verified, which ones may be submitted as copies, and those that are no longer be needed in the licensing process. The Credentials Committee will be making recommendations on how the licensing process for all professions could be streamlined. The Committee asked that any recommendation made by the Advisory Board be reported at its next meeting on November 8th.

Members reviewed current licensure requirements for genetic counselors and it was the consensus of members that digital opportunity for submission of required documents in the licensing process made sense. Members also agreed that the application process could be simplified for applicants while still protecting the public.

After discussion, and upon a motion made by Tahnee Causey, seconded by Lydia Higgs, the Advisory Board voted to recommend that a license applicant should submit primary source verification of the following documents: Professional Education /School Transcripts, American Board of Genetic Counseling (ABGC) or American Board of Medical Genetics (ABMG) Certificate, ABGC Active Candidate status letter for temporary license applicants, National Practitioner Data Bank (NPDB) self-query report and one state license verification.

Copies of the following documents could be accepted: Other state license verifications, if submitted; a digitally-certified electronic copy of the NPDB report in lieu of a mailed report, and supporting documentation for any question answered 'Yes' on the application form that is deemed non-routine.

It is no longer necessary for applicants to submit a "Form B" employment verification.

4. Correspondence:

a. CE Requirements

Members discussed correspondence received from Martha Thomas regarding whether continuing education credits completed in the previous license renewal cycle should count towards license renewal in the current cycle, even though a certificate of course completion may not yet have been issued or received.

It was the consensus of members that the issue can be addressed by asking the licensee who is the subject of a continuing education audit to provide an explanation that clarifies the status of credit hours earned.

b. Exam Candidate Temporary Licensure

Tahnee Causey brought up the issue of a new graduate who took the national board examination and failed prior to applying for a temporary license with the Board. The Board's regulation states that an exam candidate who has been granted an active candidate status by the American Board of Genetic Counseling (ABGC) could apply for a temporary license with the Board. Ms. Higgs felt that this was a violation of the spirit of the law.

Ms. Causey will contact the ABGC to find out if an exam candidate's active candidate status could be renewed and report her findings back to the Board at the next meeting.

5. Approval of 2022 Meeting Calendar

Marilyn Foust moved to approve the proposed meeting dates for the Advisory Board on the 2022 Board calendar. Lydia Higgs seconded. The schedule of meetings was unanimously approved.

6. Election of Officers

Marilyn Foust moved to nominate Tahnee Causey as Chair and Lydia Higgs as Vice-Chair. Lydia Higgs seconded the motion. Members unanimously approved the slate of officers nominated.

Announcements:

Next Scheduled Meeting:

The next scheduled meeting is Monday January 31, 2022 @ 1pm.

Adjournment

With no other business to conduct, the meeting adjourned @2:46pm.

Lori Swain, Citizen, Chair

William L. Harp, MD, Executive Director

Michael Sobowale, LLM, Deputy Director

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 464

An Act to amend the Code of Virginia by adding a section numbered 54.1-2408.4, relating to out-of-state health care practitioners; temporary authorization to practice pending licensure; licensure by reciprocity for physicians; emergency.

[S 317]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-2408.4 as follows:

§ 54.1-2408.4. Temporary authorization to practice.

A. A health care practitioner licensed, certified, or registered in another state or the District of Columbia may temporarily practice for one 90-day period, provided that the following conditions are met:

1. The practitioner is contracted by or has received an offer of employment in the Commonwealth from a licensed hospital, a nursing home, a dialysis facility, the Department of Health, or a local health department;

2. The employer or contractor verifies that the out-of-state health care provider possesses an active and unencumbered license, certification, or registration for the profession in which he will be employed or contracted in another state or the District of Columbia;

3. The employer or contractor obtains a report from the National Practitioner Data Bank if the applicant is subject to reporting; and

4. Prior to the out-of-state health care practitioner's practicing, the employer or contractor notifies the appropriate health regulatory board that the out-of-state health care practitioner is employed or under contract and will practice under the temporary authorization. This notice shall include the out-of-state health care practitioner's out-of-state license, certification, or registration number and a statement that such practitioner meets all of the requirements set forth in this section.

B. If the health care practitioner practicing with a temporary authorization has submitted an application for licensure, certification, or registration, the applicable health regulatory board shall expedite such applications for out-of-state health care practitioners practicing pursuant to this section. If licensure, certification, or registration remains pending after the initial 90-day temporary authorization, the authorization may be extended for an additional 60 days, provided that the employer or contractor submits notice to the applicable health regulatory board.

C. Out-of-state health care practitioners practicing pursuant to this section shall be subject to the laws and regulations of the Commonwealth and shall be subject to disciplinary action by the applicable health regulatory board.

2. That the Board of Medicine shall pursue reciprocity agreements with jurisdictions that surround the Commonwealth to streamline the application process in order to facilitate the practice of medicine. Such agreements shall include a provision that, as a requirement for reciprocal licensure, the applicant shall not be the subject of any pending disciplinary actions in the reciprocal jurisdiction. The Board of Medicine shall grant a license by reciprocity to a physician who meets the requirements for licensure by reciprocity within 20 days of receipt of an application that complies with the criteria established in the applicable reciprocity agreement and in an expedited manner consistent with the Commonwealth's reciprocal agreements with each surrounding jurisdiction.

3. That the Department of Health Professions shall, beginning July 1, 2023, annually report to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions the number of out-of-state health care practitioners who have utilized the temporary authorization to practice pending licensure and have not subsequently been issued full licensure.

4. That an emergency exists and this act is in force from its passage.

Agenda Item: Consider Adoption of Bylaws for the Advisory Board on Genetic Counseling

Included in your agenda packet is a draft copy of Bylaws for the Advisory Board

Action Needed:

- Approve and Recommend Adoption to the full Board; or
- Take no action

BYLAWS



Virginia Board of Medicine



Advisory Board on Genetic Counseling



Virginia Department of
Health Professions

**BYLAWS FOR
THE ADVISORY BOARD ON GENETIC COUNSELING**

Article I - Members of the Advisory Board

The appointments and limitations of service of the members shall be in accordance with § 54.1-2957.22. of the Code of Virginia.

Article II - Officers

Section 1. Titles of Officers - The officers of the advisory board shall consist of a chairman and vice-chairman elected by the advisory board. The Executive Director of the Board of Medicine shall serve in an advisory capacity.

Section 2. Terms of Office - The chairman and vice-chairman shall serve for a one-year term and may not serve for more than two consecutive terms in each office. The election of officers shall take place at the first meeting after July 1, and officers shall assume their duties immediately thereafter.

Section 3. Duties of Officers.

- (a) The chairman shall preside at all meetings when present, make such suggestions as may deem calculated to promote and facilitate its work, and discharge all other duties pertaining by law or by resolution of the advisory board. The chairman shall preserve order and conduct all proceedings according to and by parliamentary rules and demand conformity thereto on the part of the members. The chairman shall appoint all committees as needed.

The chairman shall act as liaison between the advisory board and the Board of Medicine on matters pertaining to licensing, discipline, legislation and regulation of genetic counselors.

When a committee is appointed for any purpose, the chairman shall notify each member of the appointment and furnish any essential documents or information necessary.

- (b) The vice-chairman shall preside at meetings in the absence of the chairman and shall take over the other duties of the chairman as may be made necessary by the absence of the chairman.

Article III - Meetings

Section 1. There shall be at least one meeting each year in order to elect the chairman and vice-chairman and to conduct such business as may be deemed necessary by the advisory board.

Section 2. Quorum - Three members shall constitute a quorum for transacting business.

Section 3. Order of Business - The order of business shall be as follows:

- (a) Calling roll and recording names of members present
- (b) Approval of minutes of preceding regular and special meetings
- (c) Adoption of Agenda
- (d) Public Comment Period
- (e) Report of Officers
- (f) Old Business
- (g) New Business

The order of business may be changed at any meeting by a majority vote.

Article IV - Amendments

Amendments to these bylaws may be proposed by presenting the amendments in writing to all advisory board members prior to any scheduled advisory board meeting. If the proposed amendment receives a majority vote of the members present at that regular meeting, it shall be represented as a recommendation for consideration to the Board of Medicine at its next regular meeting.

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Commonwealth of Virginia



REGULATIONS

GOVERNING THE PRACTICE OF GENETIC COUNSELORS

VIRGINIA BOARD OF MEDICINE

Title of Regulations: 18 VAC 85-170-10 et seq.

**Statutory Authority: § 54.1-2400 and Chapter 29
of Title 54.1 of the *Code of Virginia***

Effective Date: September 1, 2021

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Part I. General Provisions.

18VAC85-170-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board"

"Genetic counselor"

"Practice of genetic counseling"

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ABGC" means the American Board of Genetic Counseling.

"ABMG" means the American Board of Medical Genetics.

"Active practice" means a minimum of 160 hours of professional practice as a genetic counselor within the 24-month period immediately preceding application for reinstatement or reactivation of licensure. The active practice of genetic counseling may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

"Conscience clause" means the provision of § 54.1-2957.21 of the Code of Virginia.

"NSGC" means the National Society of Genetic Counselors.

18VAC85-170-20. Public participation guidelines.

A separate board regulation, 18VAC85-11, entitled Public Participation Guidelines, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18VAC85-170-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when sent to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-170-40. Fees.

The following fees are required:

1. The application fee for licensure, payable at the time the application is filed, shall be \$130.

2. The application fee for a temporary license, payable at the time the application is filed, shall be \$50.
3. The biennial fee for renewal of active licensure shall be \$135 and for renewal of inactive licensure shall be \$70, payable in each odd-numbered year in the license holder's birth month. For 2021, the renewal fee for an active license shall be \$108, and the renewal fee for an inactive license shall be \$54.
4. The additional fee for late renewal of licensure within one renewal cycle shall be \$50.
5. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be \$180 and shall be submitted with an application for licensure reinstatement.
6. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
8. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.
9. The fee for a letter of good standing or letter of verification to another jurisdiction shall be \$10.

Part II. Requirements for Licensure as a Genetic Counselor.

18VAC85-170-50. Application requirements.

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-170-40.
2. Verification of a professional credential in genetic counseling as required in 18VAC85-170-60.
3. Verification of practice as required on the application form.
4. If licensed or certified in any other jurisdiction, documentation of any disciplinary action taken or pending in that jurisdiction.

18VAC85-170-60. Licensure requirements.

A. An applicant for a license to practice as a genetic counselor shall provide documentation of (i) a master's degree from a genetic counseling training program that is accredited by the Accreditation Council of Genetic Counseling and (ii) a current, valid certificate issued by the ABGC or ABMG to practice genetic counseling.

B. Pursuant to § 54.1-2957.19 D of the Code of Virginia, applicants for licensure who do not meet the requirements of subsection A of this section may be issued a license provided they (i) apply for licensure before December 31, 2018; (ii) comply with the board's regulations relating to the NSGC

Code of Ethics; (iii) have at least 20 years of documented work experience practicing genetic counseling; (iv) submit two letters of recommendation, one from a genetic counselor and another from a physician; and (v) have completed, within the last five years, 25 hours of continuing education approved by the NSGC or the ABGC. For the purpose of this subsection, the board deems the provisions of Part IV (18VAC85-170-110 et seq.) of this chapter to be consistent with the NSGC Code of Ethics.

C. An applicant for a temporary license shall provide documentation of having been granted the active candidate status by the ABGC. Such license shall expire 12 months from issuance or upon failure of the ABGC certification examination, whichever comes first.

Part III. Renewal and Reinstatement.

18VAC85-170-70. Renewal of license.

A. Every licensed genetic counselor who intends to maintain an active license shall biennially renew his license each odd-numbered year during his birth month and shall:

1. Submit the prescribed renewal fee; and
2. Attest to having met the continuing education requirements of 18VAC85-170-100.

B. The license of a genetic counselor that has not been renewed by the first day of the month following the month in which renewal is required is lapsed. Practice with a lapsed license may be grounds for disciplinary action. A license that is lapsed for two years or less may be renewed by payment of the renewal fee, a late fee as prescribed in 18VAC85-170-40, and attestation of compliance with continuing education requirements.

18VAC85-170-80. Inactive license.

A licensed genetic counselor who holds a current, unrestricted license in Virginia shall, upon a request at the time of renewal and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice genetic counseling in Virginia.

18VAC85-170-90. Reactivation or reinstatement.

A. To reactivate an inactive license or to reinstate a license that has been lapsed for more than two years, a genetic counselor shall submit evidence of competency to return to active practice to include one of the following:

1. Information on continued active practice in another jurisdiction during the period in which the license has been inactive or lapsed;
 2. Attestation of meeting requirements for continuing education as specified in 18VAC85-170-100 for each biennium in which the license has been inactive or lapsed, not to exceed four years;
- or

3. Current certification by ABGC or ABMG.

B. To reactivate an inactive license, a genetic counselor shall pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure.

C. To reinstate a license that has been lapsed for more than two years a genetic counselor shall file an application for reinstatement and pay the fee for reinstatement of his licensure as prescribed in 18VAC85-170-40. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience, or reexamination.

D. A genetic counselor whose licensure has been revoked by the board and who wishes to be reinstated shall make a new application to the board, fulfill additional requirements as specified in the order from the board, and make payment of the fee for reinstatement of his licensure as prescribed in 18VAC85-170-40 pursuant to § 54.1-2408.2 of the Code of Virginia.

E. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-170-100. Continuing education requirements.

A. In order to renew an active license biennially, a licensee shall complete the Continued Competency Activity and Assessment Form that is provided by the board indicating completion of at least 50 contact hours of continuing learning activities as follows:

1. A minimum of 30 of the 50 hours shall be in Category 1 activities approved by the ABGC, the ABMG, or the NSGC and may include in-service training, self-study courses, continuing education courses, or professional workshops.

2. No more than 20 of the 50 hours may be Category 2 activities or professional activity credits, which may include consultation with another counselor or a physician, independent reading or research, authorship, clinical supervision, volunteer leadership in the profession, preparation for a presentation, or other such experiences that promote continued learning.

B. A licensee shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The licensee shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The licensees selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part IV. Scope of Practice.

18VAC85-170-110. General responsibility.

A genetic counselor shall engage in the practice of genetic counseling, as defined in § 54.1-2900 of the Code of Virginia. The practice of genetic counseling may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

18VAC85-170-120. Supervisory responsibilities.

A. A genetic counselor shall be responsible for supervision of unlicensed personnel who work under his direction and ultimately responsible and accountable for patient care and outcomes under his clinical supervision.

B. Delegation to unlicensed personnel shall:

1. Not include delegation of the discretionary aspects of the initial assessment, evaluation, or development of recommendations for a patient, or any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed genetic counselor;
2. Only be made if, in the judgment of the genetic counselor, the task or procedures do not require the exercise of professional judgment and can be properly and safely performed by appropriately trained unlicensed personnel, and the delegation does not jeopardize the health or safety of the patient; and
3. Be communicated on a patient-specific basis with clear, specific instructions for performance of activities, potential complications, and expected results.

18VAC85-170-125. Responsibilities of a temporary licensee.

A. A person holding a temporary license as a genetic counselor shall practice under the clinical supervision of a genetic counselor or a physician licensed in the Commonwealth.

B. Clinical supervision shall require that:

1. The supervisor and temporary licensee routinely meet to review and evaluate patient care and treatment; and

2. The supervisor reviews notes on patient care entered by the temporary licensee prior to reporting study results and making recommendations to a patient. Such review shall be documented by some method in a patient record.

Part V. Standards of Professional Conduct.

18VAC85-170-130. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-170-140. Patient records.

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible, and complete patient records.

D. Practitioners who are employed by a health care institution or other entity in which the individual practitioner does not own or maintain his own records shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner owns and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. Post information or in some manner inform all patients concerning the timeframe for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

3. When closing, selling, or relocating his practice, meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

18VAC85-170-150. Practitioner-patient communication; termination of relationship.

A. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or his legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately withhold pertinent findings or information or make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a medication, treatment, or procedure provided or directed by the practitioner in the treatment of any disease or condition.

3. When a genetic procedure is recommended, informed consent shall be obtained from the patient in accordance with the policies of the health care entity. Practitioners shall inform patients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner practicing genetic counseling in Virginia would tell a patient.

a. In the instance of a minor or a patient who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

b. An exception to the requirement for consent prior to performance of a genetic procedure may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient.

c. For the purposes of this provision, "genetic procedure" means any diagnostic or therapeutic procedure performed on a patient that is not part of routine, general care and for which the usual practice within the health care entity is to document specific informed consent from the patient or surrogate decisionmaker prior to proceeding.

4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the practitioner-patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-170-160. Practitioner responsibility.

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;
2. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;
3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or
4. Exploit the practitioner-patient relationship for personal gain.

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.

18VAC85-170-170. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility as defined in § 37.2-100 of the Code of Virginia or hospital as defined in § 32.1-123 of the Code of Virginia.

"Remuneration" means compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320a-7b(b), as amended, or any regulations promulgated thereto.

18VAC85-170-180. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or
2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the practitioner-patient relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient neither changes the nature of the conduct nor negates the statutory prohibition.

C. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, key third party of a patient means spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC85-170-190. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.