



COMMONWEALTH of VIRGINIA

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The Honorable Jeffrey M. Frederick
Member, House of Delegates
P. O. Box 58
Woodbridge, Virginia 22194

Dear Delegate Frederick:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

In the context of state regulatory agency oversight of licensed professionals,¹ you ask whether a health regulatory board may require a Virginia licensee who is on probation for a violation that did not involve patient care to inform all employers, regardless of their location, of the restrictions on his Virginia license.²

Response

It is my opinion that health regulatory boards are authorized to restrict licenses. Further, it is my opinion that implicit within such authority is the right to place a licensee on probation and require that the licensee inform all employers, regardless of their location, of any restrictions on his Virginia license.

Applicable Law and Discussion

The Commonwealth may “safeguard and protect the public safety, health, morals and general welfare of its people.”³ The general powers and duties of health regulatory boards, including the imposition of disciplinary sanctions, are consistent with this authority. Section 54.1-2400, provides that health regulatory boards have the authority:

1. To establish the qualifications for ... licensure ... in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

....

6. To promulgate regulations ... which are reasonable and necessary to administer effectively the regulatory system....

¹For purposes of this opinion, I will limit the analysis to persons regulated by boards within the Department of Health Professions.

²You ask that I assume such person was properly licensed to work in another state and was not acting under a Virginia license in that state.

³*Stickley v. Givens*, 176 Va. 548, 557, 11 S.E.2d 631, 636 (1940).

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

....

9. To take appropriate disciplinary action for violations of applicable law and regulations. [Emphasis added.]

Section 54.1-2400 authorizes a health regulatory board to impose particular disciplinary sanctions upon a regulated health professional who violates statutory or regulatory provisions governing a health profession. Typical grounds for discipline include negligence or harm to patients, as well as such non-patient care issues as fraud, deceit, or misrepresentation in procuring a license and conviction of a felony or crime involving moral turpitude.⁴

When a health regulatory board is empowered to refuse to issue a certificate or license to any applicant, reprimand a licensee, place a licensee on probation for such time as it may designate, suspend any license for a stated period of time or indefinitely, or even revoke a license,⁵ the authority to impose lesser sanctions, to remediate identified deficiencies with the goal of assuring future continuing competency, is necessary and reasonable in fulfilling the board's statutory responsibilities.⁶ Thus, a health regulatory board may fashion individual disciplinary sanctions, including placement of a health professional on probation upon certain terms and conditions.⁷ These conditions may include requiring disclosure of adverse action to out-of-state employers. Conditions need not be restricted to those actions taking place exclusively within the Commonwealth.⁸ To do otherwise would foster a climate under which health professionals could move from state to state to avoid disclosure or discovery of adverse action history or make the enforcement of a condition impossible.⁹

⁴See, e.g., VA. CODE ANN. § 54.1-2915 (2005) (Board of Medicine), § 54.1-3007 (2005) (Board of Nursing); 18 VA. ADMIN. CODE § 30-20-280 (2007) (Board of Audiology and Speech-Language Pathology), 18 VA. ADMIN. CODE § 90-20-300 (2007) (Board of Nursing).

⁵*Id.*

⁶See § 54.1-2400(7), (9)-(10) (2005).

⁷See § 54.1-2400(10) (2005) (authorizing special conference committee to place practitioner on probation with terms it deems appropriate); *Goad v. Va. Bd. of Medicine*, 40 Va. App. 621, 633, 580 S.E.2d 494, 500 (2003) (noting, without comment, that Board had placed Goad on "'indefinite probation' *until certain specified terms were met*" (emphasis added)). The *Goad* Court made no determination that such action was impermissible. *Id.*; see also § 54.1-110 (2005) (requiring that hearings in contested cases be conducted in accordance with "Administrative Process Act (§ 2.2-4000 et seq.)"); *Kabir v. Va. State Bd. of Med.*, 9 Va. Cir. 217, 217 (1987) (interpreting § 54-316, predecessor to § 54.1-2915, and noting that Board is authorized to place anyone coming before it for suspension or revocation on probation).

⁸See § 54.1-2400(7), (9)-(10) (authorizing health regulatory boards to revoke, suspend, or restrict license or multistate license privileges and to take appropriate disciplinary action); *Barsky v. Bd. of Regents*, 347 U.S. 442, 451 (1954).

⁹See § 54.1-2409(A) (Supp. 2008) (requiring mandatory suspension of license, without hearing, of any person licensed by Department of Health Professionals when license to practice same profession or occupation is revoked or suspended in another jurisdiction); see also *Ming Kow Hah v. Stackler*, 66 Ill. App. 3d 947, 955, 383 N.E.2d 1264, 1269 (1978) (holding that prevention of "state-hopping," practice of physician disciplined in one state moving to another state to practice unhindered, is rational basis for exercise of state's police power). An example of such a condition would be the requirement that an impaired health professional abstain from drugs and alcohol. Such a requirement necessarily would apply within and without the Commonwealth.

Once a health professional is licensed by a Virginia health regulatory board, he is subject to regulation by the board and cannot assert that the standards of conduct pursuant to that license end at the state border.¹⁰ It is important to note that a health regulatory board in Virginia may take adverse action against a licensed health professional for a violation of its order, but it only may restrict the professional's Virginia license. A board cannot enter a sanction and have it enforced through another state's licensing authority or require reciprocal action by the other state. However, a sanction or restriction imposed by a Virginia regulatory board may provide a basis for another state to restrict such health professional's license.¹¹

Conclusion

Accordingly, it is my opinion that health regulatory boards are authorized to restrict licenses. Further, it is my opinion that implicit within such authority is the right to place a licensee on probation and require that the licensee inform all employers, regardless of their location, of any restrictions on his Virginia license.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

6:1354; 1:941/08-039

¹⁰Va. Real Estate Bd. v. Clay, 9 Va. App.152, 158, 384 S.E.2d 622, 626 (1989) (holding that "once an individual is licensed as an agent or broker, that person is subject to regulation by the [Real Estate] Board in any real estate transaction in which he or she participates").

¹¹*See, e.g.*, OHIO REV. CODE ANN. § 4753.10 (providing that Board of Speech-language Pathology and Audiology may revoke or suspend license of person disciplined in another state); S.C. CODE ANN. § 40-33-110(A)(4) (providing that suspension, revocation, or other disciplinary action of nurse's license in another state creates rebuttable presumption that South Carolina license may be similarly acted upon); W. VA. CODE § 30-36-18 (providing that license of acupuncturist may be suspended or revoked when licensee is disciplined by any other state); *accord* § 54.1-2409(A) (requiring mandatory suspension of license licensee regulated by Department of Health Professionals when license to practice is revoked or suspended in another jurisdiction); § 54.1-2915(A)(5) (2005) (authorizing Board of Medicine to restrict license to practice healing arts based on action of another state); § 54.1-3007(7) (2005) (authorizing Board of Nursing to suspend, revoke, or restrict license to practice based on action of another state).