

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**REGULATION OF EMPLOYEE  
ASSISTANCE PROGRAMS AND  
PROFESSIONALS**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 80**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1997**



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**Report of the  
Joint Subcommittee Studying  
Regulation of Employee Assistance  
Programs and Professionals  
to  
The Governor  
and the  
General Assembly of Virginia  
Richmond, Virginia  
January, 1997**

**EXECUTIVE SUMMARY**

House Joint Resolution No. 230, passed by the 1996 Session of the General Assembly, established a joint subcommittee to evaluate the need for regulating employee assistance programs and professionals (Appendix A). The subcommittee met on four occasions and pursued a vigorous agenda which included presentations and testimony by members of the employee assistance profession, representatives from the business community, members of professions closely related to the employee assistance field, and other concerned citizens.

An employee assistance program is a worksite-based program designed to identify and resolve employees' personal problems that may impair productivity in the workplace. Employee assistance professionals offer employers and employees and their dependents programs dealing with employee alcohol and substance abuse; family and marital problems; and legal, emotional, or other personal concerns that may adversely affect job performance and productivity. An employee assistance professional's services include identifying employee problems, establishing links between the employer and counseling and treatment resources in the community, referring the employee to an appropriate practitioner for diagnosis and treatment, and monitoring the employee's progress in addressing his problems.

Modern-day employee assistance programs originated in occupational alcohol programs first established in the 1940s by companies such as Dupont and Kodak to address decreasing profits and productivity caused by employee alcoholism. Such programs gradually expanded their focus to include other employee problems such as family and marital difficulties, stress and other emotional problems, and drug abuse. Today, over 7,000 professionals, or approximately one-third of all practicing employee assistance professionals, belong to the Employee Assistance Professionals Association (EAPA), which was established in 1989 and serves as the primary occupational organization of the profession.

The profession is largely unregulated throughout the United States. However, the profession does provide self-regulation through program standards established by the EAPA and a certification credential provided by the Employee Assistance Certification Commission (CEAP). As of this writing, only two states, Tennessee and North Carolina, have enacted licensure laws for employee assistance professionals, and the profession is completely unregulated in Virginia. Advocates supporting licensure urged the subcommittee during its

deliberations to recommend state regulation to prevent consumer harm and incompetent service by unqualified individuals holding themselves out to the public as employee assistance professionals. Opponents of licensure, many of them from the business community, noted that the employee assistance profession and the business community are capable of self-regulating the profession and asserted that cases of consumer harm have not occurred in Virginia. In addition, opponents noted that businesses and professionals providing employee assistance services do not desire the extra costs that may result from a system of licensure.

The joint subcommittee believed, after the course of its deliberations, that state regulation of employee assistance professionals is necessary to ensure that such professionals provide quality service to their clients and to prevent the occurrences of consumer harm and unqualified practice of the profession. Accordingly, the subcommittee recommended that employee assistance professionals be licensed in the Commonwealth and endorsed legislation accomplishing this recommendation (Appendix B).





## I. INTRODUCTION

The 1996 Session of the General Assembly adopted House Joint Resolution No. 230, patroned by Del. L. Karen Darner of Arlington, which authorized the creation of a seven-member joint subcommittee to study the regulation of employee assistance programs and professionals. An employee assistance program, or "EAP," is a worksite-based program designed to assist in the identification and resolution of personal concerns which impair productivity in the workplace. Such personal concerns include alcohol and substance abuse; family and marital problems; and financial, legal and health-related difficulties which may adversely affect employee job performance.

The General Assembly directed the joint subcommittee to address the following issues in its deliberations:

1. The curriculum developed by the Employee Assistance Certification Commission for certification purposes.
2. Minimum requirements for professional competency.
3. Requirements for professional licensure and renewal.
4. Requirements for program licensure and renewal.
5. Costs of state regulation of programs and professionals.
6. Sources of funding for regulation.
7. The appropriate state agency to administer regulation.
8. Any other issue relevant to the regulation of the employee assistance profession.

The joint subcommittee was chaired by Del. L. Karen Darner of Arlington. Sen. W. Henry Maxwell of Newport News served as vice-chairman. Other legislative subcommittee members include Del. Richard L. Fisher, Del. Jackie T. Stump, and Sen. H. Russell Potts, Jr.. Citizen members who served on the subcommittee were Jane Brookshire and Dodie Gill.

## **II. WORK OF THE JOINT SUBCOMMITTEE**

The joint subcommittee was required by HJR 230 to report its findings and recommendations to the Governor and the 1997 Session of the General Assembly. In pursuing its legislative mandate, the joint subcommittee met four times.

### **A. MEETING OF JULY 9, 1996 -- RICHMOND**

At its organizational meeting, the joint subcommittee elected Del. L. Karen Darner as its chairman and Sen. W. Henry Maxwell as its vice-chairman. Following the election of the chairman and vice-chairman, the subcommittee heard presentations by representatives of the employee assistance profession and staff from the Division of Legislative Services.

#### **1. Overview of Employee Assistance Programs and Professionals**

The concept of employee assistance programs originated in the 1940s in companies such as Dupont and Kodak, which created occupational alcohol programs to address decreasing profits and increasing absenteeism due to employee alcoholism. In 1971, persons operating occupational alcohol programs established the Association of Labor-Management Administrators and Consultants on Alcoholism, Inc. (ALMACA). As the 1970s progressed, occupational alcohol programs throughout the private sector and the government were expanded to confront not only alcohol abuse, but a broader spectrum of employee-related problems. Reflecting its expanded role in confronting employee problems, ALMACA became the Employee Assistance Professionals Association (EAPA) in 1989 and remains the primary occupational organization of the profession.

In defining their role in the workplace, employee assistance professionals describe their duties as consisting of seven core technology services:

1. Consulting, training, and assisting work organization leadership in managing troubled employees, enhancing the work environment, and improving employee job performance; and educating employees and their family members about employee assistance program services.
2. Providing confidential and timely problem identification and assessment for employees facing personal concerns which affect job performance.
3. Using constructive confrontation, motivation, and short-term intervention with employees to address problems that affect job performance.
4. Referring employees to appropriate practitioners for diagnosis, treatment, and assistance, and monitoring their progress.

5. Assisting employers in managing provider contracts and in establishing and maintaining relations with service providers, managed care organizations, insurers, and other third-party payers.
6. Assisting employers in administering employee health benefits covering medical and behavioral problems such as alcohol and substance abuse and mental and emotional disorders.
7. Identifying the effects of employee assistance program services on employers and employees' individual job performance.

Dodie Gill, president of the Washington D.C. Area Chapter of the Employee Assistance Professionals Association (EAPA), testified during the subcommittee's initial meeting that the EAPA is an international organization comprised of over 7,000 employee assistance professionals. She noted that approximately 1.5 million Virginians use employee assistance program services provided by approximately 1,000 employee assistance professionals. Gill urged the subcommittee to recommend licensing employee assistance professionals to ensure that the public is provided with quality employee assistance services.

## **2. Regulation of the Profession**

Currently, employee assistance programs and professionals are not regulated by the Commonwealth of Virginia or by the vast majority of other states in the union. The profession does maintain two forms of self-regulation, the first being the National Employee Assistance Program Standards established by the EAPA, and the second being the professional certification requirements set forth by the Employee Assistance Certification Commission (EACC). Professionals who become certified by the EACC are referred to as certified employee assistance professionals, or "CEAPs."

The CEAP designation is a voluntary credential which an employee assistance professional may attain by passing the CEAP examination and completing either (i) 3,000 hours of supervised training by an EA professional and 60 professional development hours or (ii) 2,000 hours of supervised training by an EA professional, a master's degree in a field related to employee assistance, and 15 professional development hours. The CEAP examination is administered by the Professional Testing Corporation and tests the applicant on types of work organizations, human resources management, employee assistance policy and administration, employee assistance direct services, substance abuse, and personal and psychological problems. To maintain their certification, CEAPs are required to complete 60 professional development hours every three years and abide by EAPA's Code of Professional Conduct.

As of this writing, only two states, Tennessee and North Carolina, have enacted employee assistance licensure laws. Tennessee enacted its system of licensure for employee assistance professionals in 1993 and North Carolina followed suit with its own licensure statute in 1996. Each state has crafted a system of licensure for employee assistance professionals that (i) creates an occupational board; (ii) authorizes the board to adopt professional regulations; (iii) establishes

minimum licensing standards; and (iv) allows the board to condition, suspend, or revoke a professional's license depending on the severity of the violation. In addition, both states base their licensure requirements on the CEAP credential and both prohibit unlicensed individuals from holding themselves out to the public as employee assistance professionals. Other states which have considered legislation or studied the issue of licensing employee assistance professionals include Indiana, Louisiana, and New York.

## **B. MEETING OF SEPTEMBER 25, 1996 -- RICHMOND**

At the joint subcommittee's second meeting, members heard testimony regarding the benefits and varieties of both in-house and externally based employee assistance programs as well as the results of a Radford University study of EAPs in Southwest Virginia. Staff from the Division of Legislative Services provided a summary of case law relevant to the employee assistance occupation and an overview of professional regulation in Virginia.

### **1. Radford University Study**

Martin Maples summarized the results of a Radford University study of employee assistance programs in Southwest Virginia. During the summer of 1994, Dr. J. S. McLaughlin and Dr. R. A. Herring III surveyed 167 organizations, each employing over 100 individuals, regarding their use of employee assistance services. The study defined EAPs as "job-based strategies for the identification, motivation and treatment of bio-medical conditions not limited to, but usually including, alcohol and drug addictions, mental health problems and adjustment problems." Of the organizations surveyed, 56 percent have an EAP and 76 percent of EAPs used by these organizations are externally based programs. The primary problems covered by EAPs of survey respondents include alcohol and drug abuse, job stress, and emotional problems. The study found that over 50 percent of the respondents indicated that their EAP is effective in addressing employee problems and that such programs increase job productivity and employee morale and reduce absenteeism. However, survey respondents were less likely to agree that EAPs increase vigilance on worker safety, reduce employee turnover, and lower health insurance premiums.

### **2. Internal and External Employee Assistance Programs**

The majority of employee assistance programs are externally based. However, many large corporations maintain internal employee assistance programs to serve their workforce. Richard Wall, director of Mobil Oil Corporation's Employee Assistance Program, testified that Mobil's program is a hybrid of an in-house and externally based EAP, with three certified employee assistance professionals managing the program and the rest of the services being contracted out to external providers. Wall noted that Mobil's program is designed to provide early identification and resolution of personnel problems in order to increase productivity and keep healthcare costs manageable. In addition, the company estimates that for every dollar it invests in EAP services, it saves approximately four dollars in healthcare costs. Wall stated that although Mobil Oil audits its external EAP providers as a quality control measure, a licensure

system for employee assistance professionals would promote effective professional service for employees at both Mobil and other corporations doing business in Virginia.

Cynthia Reed, the executive director of Lynchburg Employee Assistance Services of Central Virginia, summarized her organization's role as an external provider of employee assistance services. Established in 1977, Reed's organization provides "broadbrush" employee assistance services to businesses with 15 to 2,400 employees, and she defines an employee assistance professional as a "workplace behavioral specialist." To ensure quality service, Lynchburg Employee Assistance Services of Central Virginia employs only certified employee assistance professionals who provide core technology services to the organization's clients. Reed estimates that her CEAPs spend 60 percent of their time providing direct service to their employee/employer clients; 15 percent of their time on-site, understanding the culture of their client's workplace; 15 percent of their time attending training courses; and the remaining 10 percent of their time consulting with their client's human resources and managerial personnel. She urged the subcommittee to recommend a licensure system as a means of ensuring quality service for Virginia's employers and employees.

### **3. Relevant Case Law**

Reported appellate cases involving employee assistance professionals are not numerous. However, a North Carolina Court of Appeals case, Reich v. Price, 429 S.E.2d 372, 110 N.C. App. 255 (1993), addressed many of the issues under consideration by the subcommittee. In Reich, a Southern Bell employee (Donna Reich) sued an employee assistance professional (Michael Price) and Southern Bell for (i) professional malpractice; (ii) intentional infliction of emotional distress; and (iii) negligent failure to supervise.

The plaintiff, Reich, was employed by Southern Bell in 1979, and in 1981 she first contacted Southern Bell's employee assistance program seeking assistance with marital difficulties. She again contacted the program in 1986 and was referred to co-defendant Michael Price, director of Southern Bell's EAP. Defendant Price suggested they meet at a local restaurant, and at the meeting Price recommended that Reich continue to see her present psychiatrist. In June 1986, Reich again contacted her employer's EAP and requested to speak with defendant Price regarding a workplace problem. Price was in Wilmington at the time of Reich's call and was contacted there concerning the plaintiff's call. After several phone conversations with defendant Price, Reich determined that meeting with Price was critical to her continued employment with Southern Bell, and she flew to Wilmington to meet with him.

According to the plaintiff, Price took her to his hotel room where they consumed alcohol, marijuana, and cocaine, and engaged in sexual intercourse. After the alleged encounter with the defendant, the plaintiff attempted suicide twice. Defendant Price admitted he met with Price in Wilmington, but denied consuming drugs or engaging in sexual relations with the plaintiff.

The court affirmed the trial court's ruling in favor of the defendants Southern Bell and its EAP director, Michael Price. In its decision, the court stated, "In order to assert a professional malpractice claim, plaintiff must establish (1) the nature of defendant's profession, (2)

defendant's duty to conform to a certain standard of conduct, and (3) that the breach of this duty proximately caused injury to her." Because the plaintiff, Price, failed to provide sufficient evidence of EAP professional standards, the court held that the plaintiff failed to establish the nature of the employee assistance profession and therefore had no claim for professional malpractice. In addition, the court noted that because the nature of the employee assistance profession was not sufficiently defined by the plaintiff and no state regulation existed, the defendant, Price, had no duty to conform to a certain standard of conduct in his relations with the plaintiff.

Representatives of the employee assistance profession assert that the alleged harm described in the Reich case is the type of conduct which could potentially be prevented by a system of professional licensure. In addition, they note that state regulation could sufficiently define the nature of the employee assistance profession so that claims of professional malpractice could advance in the court system if a claim has merit.

Staff also discussed the United States Supreme Court case of Jaffe v. Redmond, 116 S.Ct. 1923 (1996), in which the Court established a psychotherapist-patient evidentiary privilege. The Court noted in dicta that the determination of evidentiary privileges is not a static rule, but one in which courts consider each profession on a case-by-case basis, thereby opening the door for potential recognition of an employee assistance professional-client evidentiary privilege.

#### **4. Professional Regulation in Virginia**

Section 54.1-311 of the Virginia Code defines the five degrees of professional regulation currently implemented in Virginia. From least to most intrusive, they are: (i) amending or creating civil and criminal remedies to eradicate existing harm or prevent potential harm; (ii) promulgating regulations to provide more adequate inspection procedures and enhance the injunctive powers of the appropriate regulatory board; (iii) implementing a system of registration if it is necessary to determine the impact of a profession on the public; (iv) implementing a system of certification when the public requires a substantial basis for relying on the professional services of a practitioner; and (v) implementing a system of licensure when adequate regulation cannot be achieved by means other than licensing.

Regulation of a profession often begins with a study by the agency under which the profession may ultimately be regulated. This "receiving agency" then determines the need and the cost of regulation and the appropriate degree of regulation to fulfill identified needs, and reports its findings to the General Assembly.

Due to the high direct and indirect costs inherent in establishing any new or expanded level of occupational regulation, "receiving" agencies typically conduct an analysis of complaints by consumers and others involved in the industry to ensure that any problems are properly addressed at minimal costs and in the most efficient and effective manner. Regulatory programs are developed principally when actual problems can be demonstrated, and not merely as a response to a perceived threat of harm. Generally, a regulatory program which establishes job-

entry requirements is unnecessary regulation if there is not overwhelming evidence that the public is at immediate risk.

## **C. MEETING OF NOVEMBER 26, 1996 -- RICHMOND**

At the joint subcommittee's third meeting, members conducted a work session and heard public comment regarding the need for regulation of employee assistance programs and professionals.

### **1. Public Comment**

Steve Willis, a representative of the Virginia Counselors Association, urged the subcommittee to strictly define the scope of the employee assistance profession to ensure that employee assistance professionals who are not trained in counseling do not provide such treatment. He noted that much of the literature offered by the employee assistance profession describes the vocation in "treatment" terms, and he expressed concern that a lack of specificity and accuracy in the description of the profession could potentially deceive and harm consumers of employee assistance services.

Also recommending that the subcommittee clearly define the scope of the profession was Robert Kyle, a representative of the Virginia's Manufacturers Association. He noted that of the 21 VMA members he surveyed, five supported EAP regulation, 14 opposed it, and two were undecided. Kyle suggested that the subcommittee consider forms of regulation less intrusive than licensure (e.g. registration or certification), and he raised the issue of whether out-of-state EAPs serving Virginia employees would be regulated. Dennis Grant, director of Virginia Power's employee assistance program, commented that a system of professional licensure mandating the provision of core technology services would eliminate concerns over unqualified counseling and would promote quality control throughout the profession. The subcommittee concurred with this emphasis.

### **2. Work Session**

The work session focused on a model licensure bill provided by the Employee Assistance Professional Association (EAPA). According to EAPA estimates, there are approximately 1,100 potential regulants in Virginia and of that total, 119 are certified employee assistance professionals. Members of the EAPA expressed their support for licensure and recommended that the study (i) require the incorporation of core technologies to conduct a lawful practice as an EAP and (ii) provide strict standards of confidentiality in any regulatory bill that may be introduced.

After considering such alternatives to licensure as registration, certification, and misdemeanor penalties for unlawful practice and breach of confidentiality, the subcommittee determined that EAPs should be regulated under the Department of Professional and Occupational Regulation (DPOR). The subcommittee also requested a cost analysis for EAP regulation by the DPOR.

## **D. MEETING OF JANUARY 7, 1997 -- RICHMOND**

At the subcommittee's last meeting, members heard public comment and continued their work on EAP licensure legislation.

### **1. Public Comment**

Katie Webb, a representative of the Virginia Hospital and Healthcare Association, summarized the results of her member survey regarding the potential licensure of employee assistance professionals. She surveyed 75 members and received 50 responses, 44 of whom offer an employee assistance program to their employees. Of the respondents, 42 opposed regulation of employee assistance professionals, six supported regulation, and two were undecided. Webb noted that of those opposed to regulation, most felt that industry self-regulation was sufficient to ensure quality service and did not desire an additional category of licensure for professionals working in their programs. Steve Willis, of the Virginia Association of Clinical Counselors, also expressed reservations about additional licensure requirements, noting that many of the professionals offering services related to employee assistance, such as licensed professional counselors and licensed social workers, do not want additional licensure requirements. In addition, he stated that the current national certification of employee assistance professionals (CEAP) is a sufficient quality control measure, and he urged rejection of the licensure bill. A subcommittee member, Dodie Gill, responded that the employee assistance profession does not provide mental health care treatment and noted that most employee assistance professionals possessing other licenses are willing to pay the fees necessary to obtain licensure in the employee assistance profession.

### **2. Work Session**

Staff reported to the subcommittee the results of the cost analysis of licensure conducted by the Department of Professional and Occupational Regulation. Jack E. Kotvas, director of DPOR, stated in a letter to subcommittee staff that the cost of initial application for licensure and renewal would likely fall within a range of \$50 to \$80 per regulant. This estimated program cost assumed 1,100 potential regulants, a five-member regulatory board, and one year of board start-up costs to develop and promulgate regulations. However, the director pointed out that a number of unknown factors could significantly affect the cost of the program. Such factors include (i) the type of entry examination necessary to determine a minimum competency level, e.g., whether written, practical, or computer assisted; (ii) whether a suitable entry examination exists in the marketplace or whether DPOR will have to develop one; (iii) "grandfather" eligibility criteria and the number of applicants electing to "grandfather" into the program; (iv) whether applicants will be required to pursue and report continuing professional education, (v) the level and type of regulation established for the program; and (vi) whether licensure should be mandatory or voluntary. Kotvas suggested that the most effective method for determining the potential costs and need for regulation would be to have the DPOR conduct a further study of the profession prior to legislative action.



### III. RECOMMENDATION

The joint subcommittee believed, after the course of its deliberations, that state regulation of employee assistance professionals is necessary to ensure that such professionals provide quality service to their clients and to prevent the occurrences of consumer harm and unqualified practice of the profession. Accordingly, the subcommittee recommended that employee assistance professionals be licensed in the Commonwealth and endorsed legislation accomplishing this recommendation (Appendix B).

The joint subcommittee extends its gratitude to all interested persons who contributed to its work.

Respectfully submitted,

Del. L. Karen Darner, *Chairman*  
Sen. W. Henry Maxwell, *Vice-Chairman*  
Del. Richard L. Fisher  
Del. Jackie T. Stump  
Sen. H. Russell Potts, Jr.  
Jane Brookshire  
Dodie Gill

#### **IV. APPENDICES**

**Appendix A: House Joint Resolution No. 230 (1996)**

**Appendix B: House Bill No. 2264 (1997)**

## **Appendix A**

### **House Joint Resolution No. 230 (1996)**

HOUSE JOINT RESOLUTION NO. 230

Establishing a joint subcommittee to study the licensure and certification of Employee Assistance Programs and Employee Assistance Professionals.

Agreed to by the House of Delegates, February 23, 1996

Agreed to by the Senate, February 21, 1996

WHEREAS, an Employee Assistance Program (EAP) is a worksite-based intervention strategy intended to improve employee productivity through strategies for managing risk and reducing the need for insurance-funded services; and

WHEREAS, Employee Assistance Programs are designed to assist employees to deal effectively with issues arising from alcohol and substance abuse, family and marital problems, and workplace events that, untreated, can lead to increased absenteeism, workers compensation claims, increased health plan utilization, and reduced productivity; and

WHEREAS, 64 percent of all employers offer an Employee Assistance Program to their employees; and

WHEREAS, Employee Assistance Professionals are uniquely trained and qualified to understand and act upon the issues involved with troubled workplace employees; and

WHEREAS, the Employee Assistance Certification Commission (EACC) has established a specific, rigorous, and broad-ranging curriculum for the achievement and maintenance of the certification credential for employee assistance professionals, with

a curriculum encompassing proficiency in the recognition, intervention, assessment, referral, tracking, and re-integration of troubled employees; and

WHEREAS, it is in the interest of employers and employees alike that management and employees be served by well-qualified persons who deliver services expected in order to increase the productivity of business and address the issues facing employees; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the licensure and certification of Employee Assistance Programs and Employee Assistance Professionals. The study shall consider, but not be limited to, the curriculum developed by the Employee Assistance Certification Commission for certification purposes, minimum requirements for professional competency, potential requirements for professional licensure and renewal, potential requirements for program licensure and renewal, the cost of state regulation, potential sources of funding, and the appropriate state agency to administer such licensure and certification.

The joint subcommittee shall be composed of 7 members appointed as follows: 3 members of the House of Delegates to be appointed by the Speaker of the House; 2 members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and 2 citizens knowledgeable about human resources management and employee assistance programs, 1 to be appointed by the Speaker of the House and 1 to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall consult with the Department of Labor and Industry and the Department of Health Professions. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The direct costs of the study shall not exceed \$7,500.

The joint subcommittee shall complete its work in time to present its findings and recommendations to the Governor and the 1997 Session of the General Assembly as

provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

#

## **Appendix B**

**House Bill No. 2264 (1997)**

HOUSE BILL NO. 2264

Offered January 17, 1997

A BILL to amend and reenact §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia and to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 13.1, consisting of sections numbered 54.1-1309 through 54.1-1314, relating to the licensure of employee assistance professionals.

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Patrons-- Darner, Albo, Almand, Barlow, Bryant, Christian, Connally, Cooper, Davies, Hamilton, Hull, Keating, Phillips, Plum, Puller, Stump, Van Landingham and Watts; Senator: Maxwell

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Referred to Committee on General Laws

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Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.6 and 9-6.25:2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 13.1, consisting of sections numbered 54.1-1309 through 54.1-1314, as follows:

§ 2.1-1.6. State boards.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies affiliated with a state agency within the executive branch:

Accountancy, Board for  
Aging, Advisory Board on the  
Agriculture and Consumer Services, Board of  
Air Pollution, State Advisory Board on  
Alcoholic Beverage Control Board, Virginia  
Apple Board, Virginia State  
Appomattox State Scenic River Advisory Board



Aquaculture Advisory Board  
Architects, Professional Engineers, Land Surveyors and Landscape Architects, State  
Board for  
Art and Architectural Review Board  
Athletic Board, Virginia  
Auctioneers Board  
Audiology and Speech-Language Pathology, Board of  
Aviation Board, Virginia  
Barbers, Board for  
Branch Pilots, Board for  
Bright Flue-Cured Tobacco Board, Virginia  
Building Code Technical Review Board, State  
Catoctin Creek State Scenic River Advisory Board  
Cattle Industry Board, Virginia  
Cave Board  
Certified Seed Board, State  
Chesapeake Bay Local Assistance Board  
Chickahominy State Scenic River Advisory Board  
Child Abuse and Neglect, Advisory Board on  
Chippokes Plantation Farm Foundation, Board of Trustees  
Clinch Scenic River Advisory Board  
Coal Mining Examiners, Board of  
Coal Research and Development Advisory Board, Virginia  
Coal Surface Mining Reclamation Fund Advisory Board  
Coastal Land Management Advisory Council, Virginia  
Conservation and Development of Public Beaches, Board on  
Conservation and Recreation, Board of  
Contractors, Board for  
Corn Board, Virginia  
Correctional Education, Board of  
Corrections, State Board of  
Cosmetology, Board for  
Criminal Justice Services Board  
Dark-Fired Tobacco Board, Virginia  
Deaf and Hard-of-Hearing, Advisory Board for the Department for the  
Dentistry, Board of  
Design-Build/Construction Management Review Board  
Education, State Board of  
Egg Board, Virginia  
Emergency Medical Services Advisory Board  
Employee Assistance Professionals, Board for  
Farmers Market Board, Virginia  
Film Office Advisory Board  
Fire Services Board, Virginia  
Forensic Science Advisory Board  
Forestry, Board of

Funeral Directors and Embalmers, Board of  
Game and Inland Fisheries, Board of  
Geology, Board for  
Goose Creek Scenic River Advisory Board  
Health Planning Board, Virginia  
Health Professions, Board of  
Health, State Board of  
Hearing Aid Specialists, Board for  
Hemophilia Advisory Board  
Historic Resources, Board of  
Housing and Community Development, Board of  
Industrial Development Services Advisory Board  
Irish Potato Board, Virginia  
Juvenile Justice, State Board of  
Litter Control and Recycling Fund Advisory Board  
Marine Products Board, Virginia  
Medical Advisory Board, Department of Motor Vehicles  
Medical Board of the Virginia Retirement System  
Medicare and Medicaid, Advisory Board on  
Medicine, Board of  
Mental Health, Mental Retardation and Substance Abuse Services Board, State  
Migrant and Seasonal Farmworkers Board  
Military Affairs, Board of  
Mineral Mining Examiners, Board of  
Minority Business Enterprise, Interdepartmental Board of the Department of  
Networking Users Advisory Board, State  
Nottoway State Scenic River Advisory Board  
Nursing, Board of  
Nursing Home Administrators, Board of  
Occupational Therapy, Advisory Board on  
Oil and Gas Conservation Board, Virginia  
Opticians, Board for  
Optometry, Board of  
Peanut Board, Virginia  
Personnel Advisory Board  
Pesticide Control Board  
Pharmacy, Board of  
Physical Therapy to the Board of Medicine, Advisory Board on  
Plant Pollination Advisory Board  
Polygraph Examiners Advisory Board  
Pork Industry Board, Virginia  
Poultry Products Board, Virginia  
Private College Advisory Board  
Private Security Services Advisory Board  
Professional and Occupational Regulation, Board for  
Professional Counselors, Board of

Professional Soil Scientists, Board for  
Psychiatric Advisory Board  
Psychology, Board of  
Public Buildings Board, Virginia  
Public Telecommunications Board, Virginia  
Radiation Advisory Board  
Real Estate Appraiser Board  
Real Estate Board  
Reciprocity Board, Department of Motor Vehicles  
Recreational Fishing Advisory Board, Virginia  
Recreation Specialists, Board of  
Reforestation Board  
Rehabilitation Providers, Advisory Board on  
Rehabilitative Services, Board of  
Respiratory Therapy, Advisory Board on  
Retirement System Review Board  
Rockfish State Scenic River Advisory Board  
Safety and Health Codes Board  
Seed Potato Board  
Sewage Handling and Disposal Appeal Review Board, State Health Department  
Shenandoah State Scenic River Advisory Board  
Small Business Advisory Board  
Small Business Environmental Compliance Advisory Board  
Small Grains Board, Virginia  
Social Services, Board of  
Social Work, Board of  
Soil and Water Conservation Board, Virginia  
Soybean Board, Virginia  
State Air Pollution Control Board  
Substance Abuse Certification Board  
Surface Mining Review, Board of  
Sweet Potato Board, Virginia  
T & M Vehicle Dealers' Advisory Board  
Teacher Education and Licensure, Advisory Board on  
Tourism and Travel Services Advisory Board  
Transportation Board, Commonwealth  
Transportation Safety, Board of  
Treasury Board, The, Department of the Treasury  
Veterans' Affairs, Board on  
Veterinary Medicine, Board of  
Virginia Board for Asbestos Licensing  
Virginia Coal Mine Safety Board  
Virginia Correctional Enterprises Advisory Board  
Virginia Employment Commission, State Advisory Board for the  
Virginia Higher Education Tuition Trust Fund, Board of the  
Virginia Horse Industry Board

Virginia Manufactured Housing Board  
Virginia Retirement System, Board of Trustees  
Virginia Sheep Industry Board  
Virginia Veterans Cemetery Board  
Virginia Waste Management Board  
Visually Handicapped, Virginia Board for the  
Voluntary Formulary Board, Virginia  
War Memorial Foundation, Virginia, Board of Trustees  
Waste Management Facility Operators, Board for  
Water Resources Research Center Statewide Advisory Board, Virginia  
Waterworks and Wastewater Works Operators, Board for  
Well Review Board, Virginia.

B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be referred to as boards:

Compensation Board  
State Board of Elections  
State Water Control Board  
Virginia Parole Board  
Virginia Veterans Care Center Board of Trustees.

§ 9-6.25:2. Policy boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following policy boards, commissions and councils:

Apprenticeship Council  
Athletic Board  
Auctioneers Board  
Blue Ridge Regional Education and Training Council  
Board for Accountancy  
Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects  
Board for Barbers  
Board for Contractors  
Board for Cosmetology  
Board for Employee Assistance Professionals  
Board for Geology  
Board for Hearing Aid Specialists  
Board for Opticians  
Board for Professional and Occupational Regulation  
Board for Professional Soil Scientists  
Board for Waterworks and Wastewater Works Operators  
Board of Agriculture and Consumer Services  
Board of Audiology and Speech-Language Pathology  
Board of Coal Mining Examiners  
Board of Conservation and Recreation  
Board of Correctional Education  
Board of Dentistry  
Board of Directors, Virginia Student Assistance Authorities  
Board of Funeral Directors and Embalmers

Board of Health Professions  
Board of Historic Resources  
Board of Housing and Community Development  
Board of Medical Assistance Services  
Board of Medicine  
Board of Mineral Mining Examiners  
Board of Nursing  
Board of Nursing Home Administrators  
Board of Optometry  
Board of Pharmacy  
Board of Professional Counselors  
Board of Psychology  
Board of Recreation Specialists  
Board of Social Services  
Board of Social Work  
Board of Surface Mining Review  
Board of Veterinary Medicine  
Board on Conservation and Development of Public Beaches  
Chesapeake Bay Local Assistance Board  
Child Day-Care Council  
Commission on Local Government  
Commonwealth Transportation Board  
Council on Human Rights  
Council on Information Management  
Criminal Justice Services Board  
Design-Build/Construction Management Review Board  
Disability Services Council  
Farmers Market Board, Virginia  
Interdepartmental Council on Rate-setting for Children's Facilities  
Library Board, The Library of Virginia  
Marine Resources Commission  
Milk Commission  
Pesticide Control Board  
Real Estate Appraiser Board  
Real Estate Board  
Reciprocity Board, Department of Motor Vehicles  
Safety and Health Codes Board  
Seed Potato Board  
Southside Virginia Marketing Council  
Specialized Transportation Council  
State Air Pollution Control Board  
State Board of Corrections  
State Board of Elections  
State Board of Health  
State Board of Juvenile Justice  
State Health Department, Sewage Handling and Disposal Appeal Review Board

State Library Board  
State Mental Health, Mental Retardation and Substance Abuse Services Board  
State Water Control Board  
Substance Abuse Certification Board  
Treasury Board, The, Department of the Treasury  
Virginia Aviation Board  
Virginia Board for Asbestos Licensing  
Virginia Fire Services Board  
Virginia Gas and Oil Board  
Virginia Health Planning Board  
Virginia Manufactured Housing Board  
Virginia Parole Board  
Virginia Public Telecommunications Board  
Virginia Soil and Water Conservation Board  
Virginia Voluntary Formulary Board  
Virginia Waste Management Board  
Waste Management Facility Operators, Board for.

#### CHAPTER 13.1.

#### EMPLOYEE ASSISTANCE PROFESSIONALS.

##### § 54.1-1309. Definitions.

"Board" means the Board for Employee Assistance Professionals.

"Core technology services" means the specific core activities, excluding physical or mental health treatment, offered by an employee assistance professional for the identification and resolution of job performance issues which shall include all of the following components:

1. Consultation with and training of work organization leadership;
2. Confidential assessment services for employees;
3. Constructive confrontation, motivation and short-term intervention with employees;
4. Referral of employees for diagnosis, treatment and assistance, and the appropriate follow-up and case monitoring;
5. Assistance to work organizations in (i) managing provider contracts and establishing and maintaining relations with service providers, managed care

organizations, insurers, and other third-party payers and (ii) providing support for employee health benefits; and

6. Identification of the effects of employee assistance program services on the work organization and employee job performance.

"Employee assistance professional" means a person who provides worksite-based employee assistance program services.

"Employee assistance program" means a worksite-based program which offers core technology services that are designed to assist in the identification and resolution of productivity problems associated with employees which may adversely affect employee job performance.

§ 54.1-1310. Board for Employee Assistance Professionals; membership; terms; meetings; quorum.

The initial Board for Employee Assistance Professionals shall be composed of five members as follows: four employee assistance professionals who have been certified by the Employee Assistance Certification Commission of the Employee Assistance Professionals Association for three consecutive years before their appointment and one citizen member. The term of the initial Board members shall be for two years. Thereafter, the Board shall be composed of four licensed employee assistance professionals and one citizen member, who shall serve terms as follows: two members for four years, two members for three years, and one member for two years.

A chairman and a vice-chairman shall be elected annually by the Board from its membership.

The Board shall meet annually and at such other times as it deems necessary. Three members of the Board shall constitute a quorum for the transaction of business.

§ 54.1-1311. Necessity for license; exemptions.

A. Beginning July 1, 1998, it shall be unlawful for any person, without a license granted by the Board, to (i) engage in or offer to engage in work as an employee assistance professional, (ii) offer to provide an employee assistance program, or (iii) contract, for compensation, to provide employee assistance program services.

B. This chapter shall not apply to any person regularly employed by private business firms, labor organizations, or state or local governments as personnel or human resource managers, deputies or assistants so long as their employee assistance activities relate only to employees of their employers and in respect to their employment.

C. Nothing in this chapter shall be construed to prevent any person from engaging in activities for which he is licensed or from using appropriate descriptive words, phrases or titles to refer to his services.

§ 54.1-1312. Requirements for licensure.

A. The Board shall grant a license only to a person who, in the opinion of the Board, meets the requirements of this section and Board regulations, and has paid any applicable fees fixed by the Board.

B. To be eligible for licensure as a employee assistance professional, an applicant shall meet each of the following requirements:

1. Be eighteen years of age or older;
2. Be of good moral character;
3. Have three years of experience working in employee assistance programming, of which 3,000 hours have been supervised experience in employee assistance programming; and
4. Have passed an appropriate examination approved by the Board and designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of an employee assistance professional.

§ 54.1-1313. Waiver of examination.



A. The Board shall waive the examination requirements for licensure as an employee assistance professional for an applicant who (i) otherwise meets the requirements of this chapter and Board regulations and (ii) holds a valid certificate granted by the Employee Assistance Certification Commission of the Employee Assistance Professionals Association.

B. The Board may waive the examination requirements for licensure as an employee assistance professional for an applicant who (i) otherwise meets the requirements of this chapter and Board regulations and (ii) is eligible for certification by the Employee Assistance Certification Commission, provided such applicant receives such certification within one year of applying for licensure by the Board.

§ 54.1-1314. Confidentiality of records; exceptions; penalty for violation.

A. Except as provided in subsection B, records maintained by an employee assistance professional concerning an employee's identity, prognosis, assessment and treatment plan, or referral for treatment shall be confidential.

B. Information from records maintained by an employee assistance professional may be disclosed:

1. If the employee or his legal representative consents in writing prior to the disclosure;

2. In a disciplinary hearing before the Board or in any subsequent trial or appeal of a Board action or order;

3. If the employee assistance professional reasonably determines that disclosure is necessary to protect the employee or any other person from imminent risk of serious physical harm or death;

4. Pursuant to a court order issued upon a showing of good cause therefor. In determining good cause, the court shall consider the need for disclosure and the injury to the employee, his relationship with the employee assistance professional, and any appropriate treatment program.

C. A person aggrieved by the disclosure of the records deemed confidential under this section may bring an action in the circuit court of the locality in which such person resides to obtain appropriate relief, including actual and punitive damages, equitable relief, and reasonable attorney's fees and court costs.

2. That the provisions of this act shall become effective on July 1, 1998, except the provisions of § 54.1-1310 shall become effective in due course.

3. That the Board for Employee Assistance Professionals shall promulgate regulations in accordance with Chapter 13.1 of Title 54.1 as soon as practicable after July 1, 1997.



