



Final Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-40-10 et seq.
Regulation title	Regulations Governing the Practice of Respiratory Care
Action title	Periodic review recommendations
Document preparation date	6/21/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The amended regulation was adopted to clarify the requirements for evidence of competency to return to active practice for applicants for reactivation of an inactive license or reinstatement of a lapsed license. The only substantive changes recommended is an alternative for evidence of continued competency that would be available to an applicant seeking to return to active practice.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 21, 2007, the Board of Medicine adopted a final amendment to 18VAC85-40-10 et seq., Regulations Governing the Practice of Respiratory Care.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

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

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

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

In addition, the Medical Practice Act requires the Board to establish requirements for the licensure of respiratory care practitioners:

§ 54.1-2954.1. Powers of Board concerning respiratory care.

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory care practitioner or who holds himself out to the public as a respiratory care practitioner or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory care practitioners. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.

The Board shall establish requirements for the supervised, structured education of respiratory care practitioners, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action is to clarify certain provisions of regulation for ease of compliance and consistency with current practices. The Board has amended rules for reactivation or reinstatement of inactive or lapsed licenses to provide requirements that will reasonably ensure

competency for active practice to protect the health and safety of patients who will receive respiratory care from such practitioners.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed change is to clarify the requirements for a person seeking reactivation from inactive status and reinstatement for a person who has allowed his license to lapse. Currently, such a person has to indicate that he has actively practiced in another jurisdiction while his license was lapsed or inactive in Virginia or provide other evidence of competency, which may be problematic since it was interpreted to mean that the applicant had to perform an internship or traineeship at a practice site in Virginia. The amended rule would specify that the evidence of competency may be hours of continuing education in respiratory care. It would also provide an additional alternative to indicate competency to return to active practice. If a respiratory care practitioner has chosen to be recertified by passage of an examination by the National Board for Respiratory Care (the certifying body that provides the licensing examination), the Board would find that to be ample evidence of current competency.

Finally, an amendment would add a provision stating that the board has the right to deny reactivation or reinstatement based on grounds that would be a violation of law or regulation. While the law currently grants such authority, the Board determined that a statement in the regulation would be clarifying to potential applicants.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to the public would be to potentially increase the accessibility of respiratory care practitioners who want to return to active practice in Virginia by clarifying the requirements. An interpretation of the current rule to require an internship or traineeship if someone has not been practicing in another jurisdiction has created a hardship on a few persons who were unable to find a situation in which that requirement could be met. Obtaining the necessary continuing education hours as an alternative to active practice is a more reasonable requirement that will not present a barrier to reentry or relocation.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other matters of interest.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

There were no changes to the text of the proposed regulation since its publication.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published on February 5, 2007 with a 60-day comment period that closed on April 6, 2007. A public hearing was conducted on February 6, 2007. There were no written or oral comments received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
61	n/a	Sets rules for obtaining an inactive license and requirements for reactivation	In the proposed action, the requirements for reactivation are deleted and restated in section 65
65	n/a	Sets rules for reinstatement of a lapsed license	<p>Subsection A: Since the requirements for evidence of competency to return to active practice were similar for <i>reactivation or reinstatement</i>, they have been combined and clarified in one subsection.</p> <p>Under current rules, there was confusion about the wording of the competency requirements for reactivation with some interpreting the rule to be more restrictive than for reinstatement of a lapsed license. For clarity and simplicity, the two were combined, which will allow an inactive or lapsed practitioner three options by which he</p>

			<p>can demonstrate competency to return to practice in Virginia. The amended rule will allow a person who has allowed his Virginia license to lapse but has been actively practicing in another state to use that practice as evidence of competency, which is not provided in current regulation.</p> <p>In addition, there will be a third option for demonstrating competency – recertification by passage of an examination from NBRC. The Board considered requiring recertification for persons lapsed or inactive for more than 5 years. While it decided not to adopt that more stringent requirement, a practitioner who voluntarily chooses to recertify would be able to use that as evidence of competency to return to active practice.</p> <p>Subsection B: The fee required for reactivation is a restatement of the current requirement from section 61 B.</p> <p>Subsection E. To ensure that the applicant understands the Board’s authority to deny relicensure if evidence is found indicating a violation of law or regulation, subsection E was added with reference to the provisions in § 54.1-2915 of the Code.</p>
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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.