

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

***DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF MEDICINE
18 VAC 85-101-10 et seq.***

**Regulations Governing the Licensure of Radiologic Technologist
Practitioners**

ITEM 1: SPECIFIC REASON FOR PROPOSED REGULATION

Since the implementation of the statutory mandate to license radiologic technologists-limited on January 1, 1997, there has been a lack of clarity about their educational requirements and no measure of their minimal competency. Questions have been raised by applicants, physician-employers, and educators about the “educational program” requirements which set forth the number of hours required but do not offer guidance on the necessary skills and knowledge and do not set any standard for quality. There is a great deal of concern and uneasiness about the educational background and minimal threshold of competency.

There is also concern that without some educational standards for the radtech-limited programs, there is an opportunity for unqualified persons to charge students for enrollment in a substandard course which does not provide the training necessary to practice with skill and safety. Those who are planning to provide a quality educational program for the radiologic technologists-limited are seeking some standard and a testing program for entry into the profession.

Therefore, the Board seeks to promulgate regulations to provide minimal guidelines for board-approved educational programs and to establish a requirement for testing by a recognized entity such as the American Registry of Radiologic Technologists.

In addition, the Virginia Department of Health has expressed concerns about the ability of persons who have been licensed in Virginia by “grandfathering”. The Radiological Health Program is aware of at least one person who was not previously qualified to do mammography who has now been able to be “licensed” without sufficient training and is now performing those services. They have serious concerns about the quality of X-rays being taken by that individual and about the potential serious consequences to women of the Commonwealth from others who are likewise minimally qualified. The VDH has requested that the Board of Medicine consider amendments to its regulations which would address the problem of the “grandfathered” licensees through additional educational

requirements or through some prohibition on performance of specialized X-ray, such as mammography.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

18 VAC 85-101-10 et seq.: Regulations Governing the Licensure of Radiologic Technologist Practitioners was promulgated under the general authority of § 54.1-2400, which establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to effectively 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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 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 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 9. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the*

full board and shall be subject to court review in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

In addition, Chapter 29 of Title 54.1 establishes the requirement for licensure of these professions and authorizes the Board to **establish qualifications for licensure** to include graduation from approved educational programs and passage of licensing examinations.

§ 54.1-2956.8:1. (Effective January 1, 1997) *Unlawful to practice radiologic technology without license; unlawful designation as a radiologic technologist or radiologic technologist, limited; Board to regulate radiologic technologists.*

Except as set forth herein, it shall be unlawful for a person to practice or hold himself out as practicing as a radiologic technologist or radiologic technologist, limited, unless he holds a license as such issued by the Board.

In addition, it shall be unlawful for any person who is not licensed under this chapter whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in conjunction with his name the words "licensed radiologic technologist" or "licensed radiologic technologist, limited" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice radiologic technology.

The Board shall prescribe by regulation the qualifications governing the licensure of radiologic technologists and radiologic technologists, limited. The regulations may include requirements for approved education programs, experience, examinations, and periodic review for continued competency.

The provisions of this section shall not apply to any employee of a hospital licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 acting within the scope of his employment or engagement as a radiologic technologist.

§ 54.1-2956.8:2. (Effective January 1, 1997) *Requisite training and educational achievements of radiologic technologists and radiologic technologists, limited.*

The Board shall establish a testing program to determine the training and educational achievements of radiologic technologists or radiologic technologists, limited, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

As cited above, § 54.1-2956.8:2 requires the Board to “*establish a testing program to determine the training and educational achievements of radiologic technologists or radiologic technologists, limited, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing*”. In the promulgation of initial regulations, the Board sought to open the window of opportunity for licensure of those persons who have been practicing radiography under supervision in a limited capacity. Therefore, educational standards established by regulation only set forth a specified number of hours of training; and no licensure test was required.

However, amendments to current regulations are now necessary to provide the consuming public in the Commonwealth with assurance that those persons seeking initial licensure to perform radiographic procedures have received sufficient training and have demonstrated minimal competency

as measured by a standard test. Without such assurance, the public is at risk from over-exposure to X-ray, from poorly image production, or the unnecessary repetition of radiography.

The physician who employs the radiologic technologist-limited in his practice also needs to be assured that someone who has been licensed by the state has a minimal level of competency to practice safely and effectively. While those with the limited license must practice under the supervision of a radiologic technologist or doctor, they are the persons who perform the majority of X-rays in doctor's offices. For that reason, it is essential that they have sufficient training and education to handle the patient and operate the equipment without risk of harm.

The Advisory Board has requested and the Board has decided to seek permission to publish a NOIRA for consideration of amendments to regulations which will utilize standards available nationally in the profession and which will provide assurance of minimal competency. Additionally, the Board has determined that it should respond to an expressed concern from the Department of Health about the qualifications of some licensees who are performing mammography by inclusion of the issue in its Pre-NOIRA submission.

ITEM 4: ALTERNATIVES TO REGULATION

Consistent with Executive Order 13 (94), the Advisory Committee on Radiologic Technology has discussed alternatives to amending these regulations. Without a regulatory action, there is no consistent, effective standard for licensure of radiologic technologist-limited as is mandated by the statute. The Board of Medicine could establish "guidelines" for educational courses; but without the force of regulation, there would be no assurance that students would receive a quality program, that employers would be able to hire adequately trained X-ray technicians, or that the public would be protected from over-exposures or substandard films.

In an effort to permit licensure for those currently practicing radiography in doctor's offices, there were no educational standards set (other than hours of training required) and no entry examination for licensure in the initial promulgation of regulation. However, the Advisory Committee and the Board now see the need for such minimal standards for the radiologic technologist-limited licensure and will consider the following alternatives:

- 1) Approval of those educational programs for the limited license in radiography which are affiliated with teaching hospitals offering courses for registered radiologic technologists.
- 2) Approval of educational programs which meet standards set by the Board through regulations to include such criteria as courses to be taught by a ARRT certified radiologic technologist with a minimum of a bachelor's degree.
- 3) Establishment of a testing program for an entry level examination. The Board would consider adoption of the test for limited licensure offered by the ARRT, which is now utilized by 20 states. The Board would approve applicants for the test and set the cut score, but would not have to develop or administer its own examination. Not only would the ARRT test provide assurance of

minimal competency through the 100 core questions on radiography but would provide a measure of competency for the anatomical areas for which the limited license permits practice. For example, if the limited license is being sought for X-rays of the skull and facial bones, the ARRT test provides an additional 20 questions for each anatomical area.

In an effort to address the problem of mammography being done by less-than qualified radiologic technologists, the Board, working with the Radiological Health Program within the Department of Health, will seek alternatives such as: (a) a change in the rules within that department to specify requirements for mammography, or (b) an opinion from the Food and Drug Administration that stating licensure by “grandfathering” in Virginia does not meet the general qualifications in radiography established by MQSA for mammography.

Through public comment period, both written and oral at its meetings, the Board will seek to adopt regulations which will be the least burdensome to applicants or employers, but will provide assurance of quality and competency to the consuming public.

ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY, AND AUTONOMY

The Board is unable to determine any effect of its intended regulatory action on family formation, stability, and autonomy.