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Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-110-10 et seq.
Regulation title	Regulations for Licensed Acupuncturists
Action title	Regulatory reform changes
Date this document prepared	3/5/13

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Amendments to Chapter 110 will update and clarify regulations for acupuncture education and maintenance of records consistent with current requirements and policies of the Board. The educational standards in effect for accredited institutions or programs since 2011 are added for the benefit of persons interested in the profession. Applicants from foreign countries will benefit from the ability to use a translating service for their documents rather than having to go through their embassies. Licensees will benefit from repeal of a redundant, unnecessary requirement for maintenance of patient records.

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 February 21, 2013, the Board of Medicine adopted amendments to 18VAC85-110-10 et seq., Regulations for Licensed Acupuncturists by a fast-track action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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:

- 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.*
- ...*
- 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. ...*

Specific authority for regulation of licensed acupuncturists is found in:

§ 54.1-2956.9. Unlawful to practice acupuncture without license; unlawful designation as acupuncturist; Board to regulate acupuncturists.

It shall be unlawful for a person to practice or to hold himself out as practicing as an acupuncturist unless he holds a license as such issued by the Board. A person licensed to practice acupuncture, when using the title "acupuncturist," shall include therewith the designation Lic.Ac. or L.Ac.

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 acupuncturist" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice acupuncture.

The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of acupuncturists.

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 the regulation 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 amended regulation is to update educational standards for consistency with the accrediting body for acupuncture education and eliminate a redundant requirement for maintenance of patient records. Existing regulations are essential for the protection of the public’s health and safety in receiving acupuncture services, so the Advisory Board did not recommend elimination of some requirements such as a recommendation for a diagnostic examination by a physician.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The action is less restrictive regulation, has been approved by the Advisory Board on Acupuncture, and has unanimous approval of the Board of Medicine. It will not be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

There are no substantive changes to existing regulations. Amendments to Chapter 110 will update and clarify regulations for acupuncture education and maintenance of records consistent with current requirements and policies of the Board. The educational standards in effect for accredited institutions or programs since 2011 are added for the benefit of persons interested in the profession. Applicants from foreign countries will benefit from the ability to use a translating service for their documents rather than having to go through their embassies. Licensees will benefit from repeal of the redundant, unnecessary requirement for maintenance of patient records.

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.*

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- 1) There are no advantages or disadvantages to the public, which will continue to be protected by the same criteria for minimal competency for initial licensure.
 - 2) There are no advantages or disadvantages to the agency or the Commonwealth.
 - 3) There are no other pertinent issues.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

To achieve this less restrictive regulation, there are no alternative methods, other than the promulgation of an amendment to the licensure requirements.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur no costs for electronic notifications to the Public Participation Guidelines. There are no on-going expenditures relating amendments to regulations for acupuncturists.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>The entities that are likely to be affected by these regulations are licensed acupuncturists or applicants for licensure as acupuncturists.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently 450 licensed acupuncturists; it is likely that almost all practice as a small business. It is unknown how many future applicants for licensure may be affected. Since the amendments clarify rather than change Board requirements, none will be negatively affected.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no costs to small businesses or other entities.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Amendments are clarifying and consistent with current Board policies to minimize confusion for applicants and licensees.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

In response to the Notice of Periodic Review, the Acupuncture Society of Virginia submitted specific recommendations for amendments to Chapter 110. By section, the recommendations and Board response were:

Section 50: Update the educational requirements for ACAOM accredited programs for consistency with current standards to avoid confusion for applicants.

Board response: Subsection D was added accordingly.

Section 60: Eliminate reference to “other board-approved accrediting agency” since ACAOM is the only accrediting body in acupuncture.

Board response: The Advisory Board acknowledges that currently there is no other accrediting body, but regulations typically provide that alternative in case there is a future change that would necessitate recognition of another agency.

Section 80: Eliminate the requirement for the Practical Examination of Point Location Skills (PEPLS) test since it is now part of the NCCAOM acupuncture examination

Board response: For recent and future graduates, it is not be necessary to verify PEPLS because the licensure examination is inclusive, but in order to assure that persons who took the NCCAOM examination before PEPLS was included have demonstrated that competency, the regulation must stay in effect.

Section 90: Eliminate the requirement for a test of English proficiency because regulations for other professions do not specify such a test.

Board response: Regulations for other professions require foreign graduates to submit documentation from a certifying body that reviews equivalency of their education and tests their English proficiency. Therefore, the Test of English as a Foreign Language (TOEFL) is not specifically required by regulation because it is part of certification. For example, graduates of foreign medical schools are required to submit a certificate from the Educational Council of Foreign Medical Graduates (ECFMG), which includes documentation of English proficiency. By law, a person may be exempted from TOEFL if the majority of his clients speak the same foreign language.

Section 100: Repeal this section which requires that “a licensed acupuncturist shall obtain written documentation that the patient has received a diagnostic examination within the past six months by a licensed doctor of medicine, osteopathy, chiropractic, or podiatry acting within the scope of his practice or shall provide to the patient a written recommendation for such a diagnostic examination on a form specified by the board and signed by the patient. The original of the signed form shall be maintained in the patient's chart and a copy provided to the patient.” The requirement is an unnecessary burden on licensed acupuncturists and their businesses and not necessary for public protection.

Board response: Section 54.1-2956.9 specifies that: “The regulations shall at a minimum require that, prior to performing acupuncture, any acupuncturist who is not licensed to practice medicine, osteopathy, chiropractic or podiatry shall either (i) obtain written documentation that the patient had received a diagnostic examination from a licensed practitioner of medicine,

osteopathy, chiropractic or podiatry with regard to the ailment or condition to be treated or (ii) provide to the patient a written recommendation for such a diagnostic examination.” Therefore, the Board did not repeal that section of regulation since it consistent with the Code of Virginia. Further, some members of the Advisory Board do not agree that the requirement is burdensome and actually provides some protection for the acupuncturist and his patients.

Section 110: Recommends that the title “Lic.Ac.” be stricken as it is no longer used by acupuncturists and that the regulation be amended to require “a clinical doctorate or PhD in order to be able to use “doctor” as a title.

Board response: Section 54.1-2956.9 specifies that either the title “Lic.Ac.” or “L.Ac.” be used to indicate a person is a licensed acupuncturist. Therefore, the Advisory Board did not recommend that it be stricken since a licensee has the option. There were other comments in opposition to requiring a PhD in order to use the title “doctor” and the Advisory Board agreed that the current regulation was appropriate and that the suggested amendment would be more restrictive.

Section 130: Recommends deletion of the section on maintenance of records as it is not consistent with other professions regulated by the Board.

Board response: The Board has proposed deletion of the section.

Section 145: Recommends the addition of an exemption for organizations such as Acupuncturists Without Borders to provide voluntary services in a state of emergency.

Board response: Exemptions from licensure must be set forth in the Code and are currently found in § 54.1-2901 for professions regulated by the Board of Medicine. The exemption for persons rendering free health care to underserved populations is set forth in #27 of that section of the Code, and regulations in section 145 are consistent with those requirements. Additionally, the Governor can provide for exemptions in a declaration accompanying a state of emergency.

In addition to comment from the Acupuncture Society of Virginia (ASVA), there were 36 comments on the regulations. Most stated support for the recommendations of the ASVA, especially the request to eliminate the form recommending patients consult with a doctor if they have not been seen recently. Additionally, there were comments about:

- 1) Dry needling with proper training – the issue is related to physical therapists who use “dry needling” in their practice. The Board of Medicine does not regulate PT’s but it has worked with that board to address the overlapping scope of practice by issuance of a guidance document on appropriate disclosures and training.
- 2) Sterility of equipment and disposal of needles – The Advisory Board did not recommend additional regulation about sterility of acupuncture equipment.
- 3) Elimination of the requirement to maintain active NCCAOM certification for renewal of licensure – The ASVA and other commenters strongly opposed the elimination and the Advisory Board concurred that the requirement of current certification provided an added protection for the integrity and competency of licensees.

Periodic review/small business impact review result

If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

There were 37 comments on the Notice of Periodic Review (see summary in Alternatives section).

1) In accordance with the Code of Virginia, the Board is required to promulgate regulations for the licensure of acupuncturists. *The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of acupuncturists.*

Therefore, there is a continued need for the regulation.

2) There were no complaints received from the public.

3) The regulation is organized and written similarly to all other chapters promulgated by the Board of Medicine; it appears to be clear and easily understood.

4) The regulation does not overlap with federal or state law, which is not specific about the criteria for licensure or the standards of practice. Grounds for unprofessional conduct in § 54.1-2915, which apply to all regulated entities under the Board, are not repeated in the regulations.

5) The regulation is frequently reviewed for consistency with changes in technology and practice. Accordingly, the regulation has been amended nine times in the last 10 years.

The economic impact of this regulation is minimal for a licensure scheme. Fees of \$135 per biennium are required to maintain a license and do not appear to be burdensome or inhibiting the growth of the profession as there was a growth rate in the number of licensed acupuncturists of 5.6% in the last biennium.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact.

Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
50	Sets out the educational requirements for graduates of approved institutions	Currently, regulations require successful completion of education in a school or college accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). There is no other accrediting body in acupuncture known to or approved by the Board. Subsection B sets out the specific hours of an accredited program after July 1, 1990. Subsection C sets out the specific hours of an accredited program after July 1, 1999. As the ACAOM has increased their standards for acupuncture education, the regulations have been amended for consistency with such standards since it is not possible for a person to graduate from an accredited program without meeting the ACAOM standards. Accordingly, as part of its periodic review, the Board has added subsection D to reflect the ACAOM standards in effect after February 1, 2011. While it may appear that the amendment is an increase in regulatory requirements, it is simply a statement of fact which is applicable to persons who obtained their acupuncture education after that date.
60	Sets out requirements for foreign graduates of nonaccredited educational programs	Currently, regulations require that documents which are not in English be translated and certified by the embassy of the issuing government. Embassies often do not fulfill that service, so documents are translated by a translating service. The regulations are amended to allow for that option.
130	Sets the requirements for maintenance of records	Section 130 was included in the acupuncture regulations before Part VI was added to set standards for professional conduct. In that Part, section 176 establishes the requirements for patient records, consistent with all professions regulated by the Board. Therefore, section 130 is redundant and may be deleted.