



**Virginia  
Regulatory  
Town Hall**

**Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document**

<b>Agency Name:</b>	Board of Medicine
<b>VAC Chapter Number:</b>	18 VAC 85-110-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Licensed Acupuncturists
<b>Action Title:</b>	Periodic review
<b>Date:</b>	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

**Summary**

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

Regulations are promulgated to provide educational and examination requirements for the licensure of acupuncturists. Provisions also establish requirements for renewal or reinstatement of a license, standards for practice, and fees to support the regulatory and disciplinary activities of the board.

**Basis**

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or*

*discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 29 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and 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 appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *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. 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.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Chapter 29 of Title 54.1 sets forth statutory provisions for the licensure and practice of acupuncturists, excerpts of which are listed below:

**§ 54.1-2900. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"Acupuncturist" means individuals approved by the Board to practice acupuncture. This is limited to "licensed acupuncturist" which means an individual other than a doctor of medicine, osteopathy, chiropractic or podiatry who has successfully completed the requirements for licensure established by the Board (approved titles are limited to: Licensed Acupuncturist, Lic.Ac., and L.Ac.)*

*"Auricular acupuncture" means the subcutaneous insertion of sterile, disposable acupuncture needles in predetermined, bilateral locations in the outer ear when used exclusively and specifically in the context of a chemical dependency treatment program.*

*"Board" means the Board of Medicine.*

*"Healing arts" means the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.*

*"Physician assistant" means an individual who has met the requirements of the Board for licensure and who works under the supervision of a licensed doctor of medicine, osteopathy, or podiatry.*

*"Practice of acupuncture" means the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain ailments or conditions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. The practice of acupuncture does not include the use of physical therapy, chiropractic, or osteopathic manipulative techniques; the use or prescribing of any drugs, medications, serums or vaccines; or the procedure of auricular acupuncture as exempted in § 54.1-2901 when used in the context of a chemical dependency treatment program for patients eligible for federal, state or local public funds by an employee of the program who is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.*

**§ 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. Such regulations shall not restrict the practice of this profession to practitioners regulated by the Board on June 30, 1992, to practice the healing arts. 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. The regulations may include requirements for approved education programs, experience, and examinations. The regulations shall exempt from the requirement for Test of Spoken English (TSE) or the Test of English as a Foreign Language (TOEFL) any foreign speaking acupuncturist who speaks the language of the majority of his clients. (1991, c. 643; 1993, c. 753; 1996, c. 470; 1999, c. 779; 2000, c. 814.)*

**§ 54.1-2956.10. Requisite training and educational achievements of acupuncturists.**

*The Board shall establish a testing program to determine the training and educational achievements of acupuncturists, 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.*

*(1991, c. 643; 1993, c. 753.)*

**§ 54.1-2956.11. Advisory Committee on Acupuncture; composition; appointment.**

*The Advisory Committee on Acupuncture, hereinafter referred to as the "Advisory Committee," shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, licensure, and regulation of acupuncturists.*

*The Advisory Committee shall be appointed by the Board of Medicine and shall be composed of seven members. Six of the members shall serve terms of four years each. Three of these six shall be doctors of medicine, osteopathy, or podiatry who are qualified by Board regulations to practice acupuncture in Virginia, and three of these six shall be licensed acupuncturists. The seventh member shall be a member of the Board of Medicine and shall serve at the pleasure of the president. Of the initial members so appointed, the three licensed acupuncturists shall be individuals, other than licensed practitioners of medicine, osteopathy, or podiatry, who are licensed to practice acupuncture in another state but are residing in Virginia. Thereafter, the three members who are licensed acupuncturists shall be residents of Virginia who are licensed as acupuncturists by the Board of Medicine and who are not also licensed by the Board to practice medicine, osteopathy, or podiatry. Any vacancy occurring during a member's term shall be filled for the unexpired balance of that term. No person shall be eligible to serve on the Advisory Committee for more than two successive terms.*

*(1991, c. 643; 1993, c. 753; 2000, c. 814.)*

## Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

An announcement of the board's review of its regulations governing the licensure of acupuncturists was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received from May 7, 2001 to July 6, 2001. During the 60-day comment period, no comments were received from members of the public.

An ad hoc committee for acupuncture held a public meeting on June 26, 2001 to conduct a review of regulations and discuss issues such as appropriate education and examination requirements for acupuncturists. Based on the review of the ad hoc committee, the Advisory Committee voted to request that the Board recommend amendments to regulations.

## Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

The goals for this regulation are as follows:

1) Achieve a high level of satisfaction for application and renewal processes for all licensed practitioners.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of licensure was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 96.6% agreed or strongly agreed that the instructions were easy to understand; 93.1% agreed or strongly agreed that the application was processed promptly; and 100% agreed or strongly agreed that the forms were easy to complete. Therefore, no changes in regulations are being considered in the application process.

There is a recommendation to amend the requirement to attest to current certification by the NCCAOM on the renewal application to clarify that the applicant is not required to submit documentation of certification with the renewal.

2) Increase the number of licensed acupuncturists to increase availability and access to services.

The first acupuncturist was licensed in 1994; in 1996, there were 46 licensees and by 2000, the number was up to 94. The Board currently licenses 123 acupuncturists.

Concerns remain about the access of foreign-trained acupuncturists to licensure in Virginia. Demands for acupuncture services are often strong in Asian populations, but the requirement for someone to have four years of practice in another jurisdiction before applying for licensure in Virginia has been a hindrance and, for some acupuncturists, an impossible hurdle to overcome. Therefore, the Board intends to consider eliminating that requirement and adding the NCCAOM requirement of credentials review to assure the equivalency of the acupuncture education.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

The two major issues facing the Board in the regulation of licensed acupuncturists and the alternatives to dealing with those issues are discussed below:

## 1. Educational requirements.

In current regulations there are different requirements for persons who received their acupuncture education before 1990 and those who were educated after 1990. In addition, the NCCAOM has educational requirements for those sitting for the certification examination. The disparity of requirements can be confusing for a candidate for licensure in Virginia. For example, Virginia requires a minimum of three academic years equivalent to 90 semester hours; the NCCAOM requires 1725 contact hours in acupuncture education. Since Virginia requires a candidate to pass the NCCAOM comprehensive examination resulting in certification by NCCAOM, it seems logical for the educational requirement for licensure to be consistent with that of the certifying body. Adopting the NCCAOM educational standard would not increase the regulatory burden. A semester hour is generally the equivalent of 20 contact hours.

## 2. Requirements for acupuncturists who had their training and education in a foreign country.

On several occasions, the Board has been petitioned by a candidate for licensure who does not meet the practice requirement for foreign-trained acupuncturists. For example, an acupuncturist who was otherwise well-qualified (foreign-trained and practicing in another country) moved to Virginia before she had the opportunity to practice in another state for four years. Current regulations have placed an unreasonable requirement on this person, because her only options are to repeat her acupuncture education in an accredited program in the U.S. or move out of state to satisfy the practice requirement. The Board has determined that the requirement is an unnecessary hindrance. Assurance by a credentials review service that the acupuncture education in a foreign country is equivalent to the requirements of the Board should be required. In addition, every candidate for licensure will continue to be required to pass the national examination in acupuncture and become certified.

### Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

The board is recommending amendments to its regulations for the licensure of acupuncturists in order to provide consistency with the national certifying body in the educational requirements and to address concerns about the unnecessary burden placed on applicants with a foreign education in acupuncture. Other amendments are recommended to clarify certain provisions of the regulations.

### Substance

*Please detail any changes that would be implemented.*

## 18 VAC 85-110-10. Definitions.

The definitions of CCAOM and NCCAOM include the names of previous organizations that these terms replaced. That language is now outdated and unnecessary and may be deleted.

**18 VAC 85-110-30. Non-restriction of doctors of medicine, osteopathy, chiropractic and podiatry.**

Since these regulations govern the practice of licensed acupuncturists, this section is unnecessary. The qualification of doctors to practice acupuncture is addressed in regulations governing their licensure (18 VAC 85-20-10 et seq.)

**18 VAC 85-110-50. Educational requirements.**

Amendments to regulations are recommended to mirror the educational requirements of the NCCAOM. Those include graduation from acupuncture program with at least 1,725 hours of entry-level acupuncture education. If an applicant was enrolled in a program on or after July 1, 1999, that program would have to be NCCAOM accredited. Educational hours must include 1,000 hours of didactic education and 500 clinical hours, including observation, internship or treatment. The remaining 225 hours may be either didactic or clinical. Hours must also be gained in a classroom or clinical setting rather than through a correspondence program.

**18 VAC 85-110-60. Requirements of graduates of non-approved educational programs in acupuncture.**

The Board is recommending amendments to delete the requirement for four years of practice in another jurisdiction. Instead the applicant who attended acupuncture school in a foreign country must submit his transcripts to a foreign credential evaluation service to determine if his education and training was equivalent to that required for certification by the NCCAOM.

**18 VAC 85-110-70. Part-time study.**

The prohibition on part-time study of more than five years should be eliminated in this section and the prohibition against correspondence courses addressed in the educational requirements listed in section 50.

**18 VAC 85-110-80. Examination requirements for licensure.**

The regulation needs to be clarified to state that the Board requires current NCCAOM certification at the time the applicant applies for licensure. Certification is also a requirement to renew an active license, so it is necessary for the acupuncturist to hold current certification at the time of applying for licensure and to maintain his certification.

**18 VAC 85-110-150. Biennial renewal of license.**

The current regulation states that the applicant must attest to having documentation of current certification by NCCAOM; that seems to confuse some applicants and lead them to believe they

must submit that documentation to renew a license. The recommended change is to delete the words “documentation of” and require them to attest to having current certification.

**18 VAC 85-110-155. Inactive licensure.**

The Board recommends elimination of the requirement to provide information on practice and licensure in other jurisdictions for the period in which the license was inactive. That is not required for other professions regulated by the Board and is unnecessarily burdensome.

### Family Impact Statement

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.*

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.