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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Nursing, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC90-19
<b>Regulation title(s)</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Clinical nurse specialist registration
<b>Date this document prepared</b>	9/18/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Board is proposing amendments in response to a petition from the Virginia Association of Clinical Nurse Specialists, which requested changes to regulations relating to registration of a clinical nurse specialist (CNS). Amendments will clarify that the Board will accept for registration evidence of a clinical nurse specialist certification that has been retired or is the core certification, provided it has been maintained and is current. Likewise, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration.

In subsection B of section 210, the regulation is amended to address renewal of a lapsed registration and reinstatement of a registration that has been suspended or revoked. Regulations are aligned with those in section 190 relating to the reinstatement of a nursing license.

## Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CNS = clinical nurse specialist

## Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for the regulatory change is a petition for rulemaking from the Virginia Association of Clinical Nurse Specialists.

## Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity'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 Nursing 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. ...

The specific authority for the Board of Nursing to register clinical nurse specialist is found in:

**§ 54.1-3005. Specific powers and duties of Board.**

*In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties: ...*

9. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists; ...

**§ 54.1-3018.1. Registration of clinical nurse specialists.**

*The Board may register an applicant as a clinical nurse specialist if the applicant:*

- 1. Holds a valid license to practice professional nursing pursuant to this article; and
- 2. Has successfully completed a graduate-level clinical nurse specialist program within a regionally accredited college or university that meets all educational qualifications and standards established by national certification guidelines and holds a national clinical nurse specialist certification that prepares the professional nurse to deliver advanced nursing services.

**Purpose**

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

Regulations were recently amended to align regulatory provisions on national certification with the language of the Code in § 54.1-3018.1 (effective 3/22/19). Further amendments will clarify that the Board will accept a specialty examination that has now been retired but the certification has been maintained or will accept the core examination for national certification as a clinical nurse specialist. Amendments are also necessary to assure that a registered nurse who has allowed his CNS registration to lapse for more than one renewal cycle is safe and competent to resume advanced practice by providing evidence of current certification.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The Board amended section 210 to clarify that it will accept for registration evidence of a clinical nurse specialist certification that has been retired or is the core certification, provided it has been

maintained and is current. Likewise, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration.

In subsection B of section 210, the regulation is amended to address renewal of a lapsed registration and reinstatement of a registration that has been suspended or revoked. Regulations are aligned with those in section 190 relating to the reinstatement of a nursing license.

### Issues

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

- 1) The primary advantage of the amendment is clearer language to avoid confusion and to facilitate registration as a CNS. There are no disadvantages.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system.” There is no restraint on competition as a result of promulgating this regulation. The language is clarifying and consistent with the Code.

### Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected - none

Localities Particularly Affected - none

Other Entities Particularly Affected - none

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	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 or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no costs to other state agencies
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	None

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Clinical nurse specialists who have allowed their registration to lapse or applicants for registration.
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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are a total of 418 CNS registered in Virginia, most of whom are not affected by this action.

<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>There are no costs.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>It could qualify a few CNS applicants who would otherwise not be registered to practice in the role of a clinical nurse specialist</p>

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

Since the requirements for registration are set in regulation, amendments are necessary to make any changes. There are no alternatives that meet the essential purpose of protection of the public.

In the petition, the Association recommended a number of changes that were either unnecessary because the suggested language is duplicative of general law or would exceed the statutory authorization for practice of a clinical nurse specialist. For example, a provisional registration, as requested by the petition, is not authorized by statute. Likewise, a registration, license or certification from another state cannot be accepted in lieu of national certification, as the statute requires an applicant to hold “a national clinical nurse specialist certification that prepares the professional nurse to deliver advanced nursing services” (§ 54.1-3018.1 of the Code of Virginia).

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

There are no alternative regulatory methods.

**Public Comment**

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Linda Thurby-Hay Pres. of Va. Assn. of Clinical Nurse Specialists (VaCNS)	Proposed language does not address all elements of petition, it does answer some urgent concerns. Wants national practice standards consistent with consensus model for an Advanced Practice Registered Nurse.	The Board concurs with the comment; some elements of the petition were unnecessarily duplicative of general statutory authority or other provisions of Chapter 19, and some elements of the consensus model for CNS are inconsistent with the current Code of Virginia.
Sarah Taylor	Supports changes recommended by the Va. Assn. of Clinical Nurse Specialists	Same response as above
Phyllis Whitehead	Same comment as VaCNS	Same response as above
Cindy Ward	Same comment as VaCNS	Same response as above
Catherine Smith	Same comment as VaCNS	Same response as above
Lisa Abrams	Supports NOIRA	The Board appreciates the comment.
Ellen Harvey	Supports NOIRA and Consensus Model	Same response to VaCNS
Jennifer Matthews	Supports NOIRA and Consensus Model	Same response to VaCNS
Kay Butler	Supports NOIRA and Consensus Model	Same response to VaCNS

**Public Participation**

*Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.*

In addition to any other comments, the Board of Nursing is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.



Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
30	Sets fees for licensure or registration	Clarifies that fee for reinstatement of suspended or revoked license would also apply to CNS registration. <i>There have been no cases of a suspended or revoked registration that staff can recall, but the fee and process for reinstatement should be set in regulation.</i>
210	Sets the qualifications for initial registration	<p>Subsection A(2) is amended to authorize the Board to accept core certification or a certification that has been retired, as evidence of current national clinical nurse specialist certification, for the purpose of initial registration. <i>The amendment clarifies that a person who obtained the core certification or was certified with a specialty certification that has now been retired may be registered, provided certification has been maintained and is current. Recently, the Board was allowed to interpret its current regulation to accept an applicant who had the core certification, but was advised that the regulation needed to be revised to specify such acceptance.</i></p> <p>Subsection B(2) is amended to authorize the Board to accept core certification or a certification that has been retired, as evidence of current national clinical nurse specialist certification, for the purpose of renewal of registration.</p> <p>Subsection B(3) clarifies the conditions for reinstatement if one's registration as a CNS has lapsed within one renewal cycle – just as the conditions for reinstatement if</p>



		<p>one's license as an RN has lapsed within one renewal cycle.</p> <p>Subsection C sets out the requirements for reinstatement if a registration has been lapsed for more than one renewal cycle or if the CNS registration has been suspended or revoked.</p> <p><i>There have been no cases of a suspended or revoked registration that staff can recall, but the fee and process for reinstatement should be set in regulation. The provision stating that a CNS whose registration has been revoked may not apply for reinstatement sooner than three years from entry of the order is set out in Code in § 54.1-2408.2.</i></p>
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