



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC125-30-10 et seq.
Regulation title	Regulations Governing the Certification of Sex Offender Treatment Providers
Action title	Regulatory review changes
Date this document prepared	3/6/14

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 will: 1) delete a “comparable degree” as an acceptable educational credential to eliminate language that may be confusing to applicants; 2) clarify the types of licenses one must hold to qualify as a supervisor for clinical experience; 3) allow acceptance of continuing education hours offered by one of the state chapters of the Association for the Treatment of Sexual Abusers; 4) specify that the standards of practice apply to applicants as well as certificate holders; and 5) add romantic relationships with clients or trainees as grounds for unprofessional conduct.

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.

SOTP = Sex Offender Treatment Provider

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 11, 2014, the Board of Psychology adopted amendments to 18VAC125-30-10 et seq., Regulations Governing the Certification of Sex Offender Treatment Providers.

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.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

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.

Statutory provisions authorizing regulations for certification of sex offender treatment providers may be found in :

§ 54.1-3605. Powers and duties of the Board.

In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties: ...

5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers.

6. To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.

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 amendments is clarification of qualifications for certification and for those who supervise the experience of trainees preparing for certification. Further clarification and specificity may improve the quality and competency of applicants. Likewise, amendments to the standards of practice will provide clear authority for the Board to refuse to issue a certificate to an applicant who is found in violation of one of the specified standards. Adherence to the standards of practice in the profession assures that a certificate holder will not face disciplinary action and is able to protect the health, safety and welfare of his clients. The client of this profession can present significant risk of harm to the public, so the Board has a unique responsibility for assuring that providers are competent and compliant with accepted standards of practice.

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 Board did not adopt any recommended changes that were more restrictive or burdensome. Therefore, the Board does not expect any of the changes to be controversial or consequential.

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.

Amendments will: 1) delete a "comparable degree" as an acceptable educational credential to eliminate language that may be confusing to applicants; 2) clarify the types of licenses one must hold to qualify as a supervisor for clinical experience; 3) allow acceptance of continuing education hours offered by one of the state chapters of the Association for the Treatment of Sexual Abusers; 4) specify that the standards of practice apply to applicants as well as certificate holders; and 5) add romantic relationships with clients or trainees as grounds for unprofessional conduct.

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 of the amendments is clarification of current rules and practices. There are no disadvantages to the public.
- 2) There are no advantages or disadvantages to 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 is no requirement more restrictive than 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

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) 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.

There is no regulatory flexibility to accomplish the intent of this action; the changes are clarifying in nature.

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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	Persons who hold certification or persons who will be applicants for certification as sex offender treatment providers.
Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	There are 408 persons who have current certification as sex offender treatment providers. The agency has no information on employers, but some are employed in government agencies, primarily in the Department of Corrections, while others are independent practitioners.
Benefits expected as a result of this regulatory proposal.	Greater clarification of rules governing educational qualifications and standards of practice.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	There are no costs to implement.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	None
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	There are no projected costs.

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.

Since there are no current members of the Board of Psychology who hold certification as a Sex Offender Treatment Provider, the regulations were sent to three certificate holders to be reviewed for clarity and current applicability. The persons who performed the review are either former board members or licensees contacted with the Board for credentials review. In addition to the recommended changes accepted by the Board, the reviewers recommended: 1) an increase in the number of annual continuing education hours for certificate holders; 2) a requirement that supervisors hold the SOTP credential, in addition to a mental health license; 3) a requirement for continuing education for supervisors; and 4) more specificity to the supervision of unlicensed persons.

While the Board agreed that the recommendations had merit, it determined that the proposed action would be in accordance with the Regulatory Reform Initiative and therefore, more restrictive provisions would not be considered in this fast-track initiative.

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, and likely impact of proposed requirements
20	Sets out the fees for applicants and certificate holders	Amendments will delete outdated language in the requirement that fees be paid by “check or money order,” since most applications and renewals are now handled electronically with credit cards. Payment can be made on-line and not “forwarded to the Board of Psychology,” as current regulations state.
30	Sets out the prerequisites for certification	An amendment in subsection A will delete the words “ executive director of the board ” because applications are not submitted to him or her but are received and processed by administrative staff of the board.
40	Establishes educational requirements for certification	An amendment will delete the option of documenting a “comparable degree acceptable to the board.” Degrees in social work, psychology, counseling, nursing, medicine or osteopathic medicine have been the only educational credential acceptable to the board. Deletion of the “comparable degree” will eliminate any possible confusion for applicants or persons reading regulations to determine the educational requirements.

50	Establishes the requirements for clinical experience and for those who supervise trainees	<p>1) The new subsection A, stating the rules for registration of supervision, is the same as subsection D in current regulations. It was moved to the beginning of this section because chronologically, registration must occur before supervision can begin.</p> <p>2) Currently, the supervisor is required to attest that he is licensed and qualified to render services to sex offender clients. The assumption is that the supervisor was licensed at the time of supervision, but the regulation is not precise. It is amended for more clarity and specificity.</p> <p>3) Subsection D sets out the requirements for a supervisor. As noted above, the supervisor must attest that he is licensed and qualified to provide services, so it is presumed that he holds a license in one of the professions that qualifies someone to be a sex offender treatment provider, namely a clinical nurse specialist, doctor of medicine or osteopathic medicine, professional counselor, clinical social worker or clinical psychologist. The amendment adds clarity to the regulation.</p> <p>4) Subsection D is deleted, and the provisions moved to new subsection A.</p> <p>5) Subsection E is deleted because the deadline for acceptance of prior experience has passed.</p>
70	Sets out the rule for supervision of unlicensed persons	The word “practice” was not appropriate for unlicensed persons who may “provide such services” under supervision. The amendment will clarify the intent of the rule.
80	Establishes requirements for renewal of certification, including continuing education	In order to be more inclusive and provide additional opportunities for continuing education hours, the amendment adds “or one of its state chapters” to the Association for the Treatment of Sexual Abusers.
100	Sets out the standards of practice for certificate holders	Amendment to subsection B will: 1) clarify that the standards apply to applicants gaining experience under supervision, as well as those who are certified; 2) restate ## 4 and 5 for greater clarity; 3) specify that the guardians of a juvenile client must be his “legal” guardian; 4) add “romantic relationships” to the prohibition against sexual intimacies; and 5) change “acceptable means of payment” to “payment responsibilities.” The board has statutory authority to refuse to issue a certificate for “causes enumerated in applicable law and regulations” [§ 54.1-2400 (7)]. To ensure that it is clear that the causes enumerated in section 100 may be grounds for denial of certification, the applicants were added to the subsection. Other changes were recommended by certificate holders who reviewed the regulations for consistency and clarity.