

**Virginia Regulatory Town Hall**  
**Agency Background Document**  
**Notice of Intended Regulatory Action (NOIRA)**

**Agency Name:** Board of Medicine; Department of Health Professions  
**VAC Number:** 18 VAC 85-20-10 et seq.  
**Regulation Title:** Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic and Physician Acupuncture  
**Action Title:** Physician profile  
**Date:** June 12, 1998

**Basis:**

*A statement identifying and describing the source(s) of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions.*

All regulations of the Board of Medicine, as listed above, were promulgated under the general authority of Title 54.1 of the Code of Virginia.

§ 54.1-2400 establishes the general powers and duties of health regulatory boards including the authority to promulgate regulations in accordance with the Administrative Process Act (#6) and the authority to levy and collect fees (#5).

*§ 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.*

**Specific statutory authority for collection of data requirements (Effective July 1, 1998).**

*§ 54/1-2910.1 Certain data required.*

*The Board of Medicine shall require all physicians of medicine or osteopathy to report and shall make available the following information:*

- 1. The names of medical schools and dates of graduation;*
- 2. Any graduate medical education at any institution approved by the Accreditation Council for Graduation Medical Education or the American Osteopathic Association;*
- 3. Any specialty board certification or eligibility for certification as approved by the American Board of Medical Specialities;*
- 4. The number of years in active, clinical practice as specified by regulations of the Board;*
- 5. Any insurance plans accepted, managed care plans in which the physician participates, and hospital affiliations;*
- 6. Any appointments, within the most recent ten-year period, of the physician to a medical school faculty and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;*
- 7. The location of any primary and secondary practice settings and the approximate percentage of the physician's time spent practicing in each setting;*
- 8. The access to any translating service provided to the primary practice setting of the physician;*
- 9. The status of the physician's participation in the Virginia Medicaid Program;*
- 10. Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ 54.1-2906, 54.1-2908, and 54.1-2909 that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action; and*
- 11. Other information related to the competency of physicians as specified in the regulations of the Board*

*The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a physician. The regulations promulgated by the Board shall provide for reports to include all paid claims in categories indicating the level of significance of each award or settlement.*

The Attorney General's Office has advised the agency in writing that the activity of collecting and releasing information to consumers is within the regulatory authority of the Board of Medicine and therefore may be supported by licensing fees.

## **Purpose:**

*A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulation's provisions are intended to solve.*

The Code of Virginia specifically sets the mandate for promulgation of this regulation in § 54.1-2910.1.

In the promulgation of regulations to implement the provision of the Act, the Board will also consider an increase in renewal fees to support the data collection and dissemination program. Since this program is modeled after the Massachusetts Physician Profile Program, the Department was able to gather information about potential costs. It is estimated that the initial costs will be \$330,000 and the continual costs thereafter would be \$250,000 a year. That information was provided to the patron, the Governor, and the Department of Planning and Budget during the consideration of SB 660 by the General Assembly.

In its Fiscal Impact Statement on SB 660, the Department of Planning and Budget acknowledged that fees for physicians would need to be increased from \$125 a biennium to approximately \$150 per biennium. It also acknowledged the need for 4 FTE's for the program and stated that the DPB can authorize the agency to exceed its upper limit for employment during the fiscal year in order to fulfill the mandate of the General Assembly to collect and disseminate the data.

## **Substance:**

*A statement delineating the potential issues to be addressed in the proposed regulation, with any preliminary regulatory language that has been developed attached.*

**The Board of Medicine is seeking to publish a Notice of Intended Regulatory Action in order to implement the provisions of Chapter 744 of the 1998 Acts of the Assembly.**

In the 1998 General Assembly, Senate Bill 660 was introduced by Senator John Watkins to require the collection and release of certain data on physicians. The legislation mandates the promulgation of regulations and specifies information which is to be required and made available upon request from a consumer.

As provided in the amended section of the Code, which becomes effective on July 1, 1998, the regulations would include the information specified in § 54.1-2910.1 (see Code section cited below) . Since the budget bill passed by the 1998 General Assembly contained no funds to support the data collection and dissemination, the proposed regulations would also have to provide for an increase in the renewal fees for physicians in accordance with the Board's authority in § 54.1-2400.

## **Alternatives:**

*A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose (identified in I.c. above), the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.*

In order for the Board of Medicine to be in compliance with the law, there is no non-regulatory solution to be considered. It is mandated to proceed with promulgation of regulations in accordance with § 54.1-2010.1. While **the data to be collected is specified**, there are several provisions of the law in which the Board has some discretion through its regulatory authority. Those are as follows:

- Information on the number of years in active, clinical practice - The Board may determine a definition for “active” (number of hours, months per year, etc.) and a definition for “clinical”.
- Information on publications in peer-reviewed literature within the most recent five-year period - The Board may need to limit the number of publications to be reported.
- Other information related to the competency of physicians - The Board will seek comment on the need for information other than that specified in § 54.1-2910.1.
- Provisions in regulation for the release, upon request from a consumer, of such information - The Board will need to develop regulations and a system for the reporting by physicians and for the availability of information to consumers.
- Provisions in regulation for the reporting of all paid malpractice claims in categories indicating the level of significance of each award or settlement.