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Regulatory
Town Hall

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Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC105-20-10 et seq.
Regulation title	Regulations Governing the Practice of Optometry
Action title	Regulatory reform changes
Date this document prepared	2/27/13

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 were adopted following a periodic review of regulations pursuant to the Governor's regulatory reform project. Amendments will: 1) clarify that an applicant who is or was licensed in another state but who does not meet the active practice requirement for endorsement may apply by examination; 2) allow approval of an applicant whose license has lapsed in another state provided he is eligible for reinstatement and has one current license; 3) allow an applicant who took the examination more than five years ago to qualify by continuing education rather than retaking the examination; 4) accept the examination required in another state at the time of initial licensure for an applicant by endorsement rather than requiring a "comparable" examination; and 5) revise renewal language to allow for electronic submissions.

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 15, 2013, the Board of Optometry adopted changes to 18VAC105-20-10 et seq., Regulations Governing the Practice of Optometry.

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 Optometry 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:

...

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 requirement for licensure as an optometrist is found in:

§ 54.1-3204. Prohibited acts.

It shall be unlawful for any person:

1. To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.

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 reduction of or alleviation in barriers to licensure, especially for applicants who have been licensed in other states. A clearer differentiation between licensure by examination and licensure by endorsement will enable applicants to navigate the process more easily. By retaining requirements relating to evidence of competency and ethical practice, the Board continues to protect the public while making it less burdensome to come to Virginia to establish an optometric 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?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The amendments proposed will result in less restrictive regulation or a revision for clarity in requirements for licensure. There should be no controversy with any of the changes, which were approved unanimously by board members.

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) clarify that an applicant who is or was licensed in another state but who does not meet the active practice requirement for endorsement may apply by examination; 2) allow approval of an applicant whose license has lapsed in another state provided he is eligible for reinstatement and holds at least one current license; 3) allow an applicant who took the examination more than five years ago to qualify by continuing education rather than retaking the examination; 4) accept the examination required in another state at the time of initial licensure for an applicant by endorsement rather than requiring a “comparable” examination; and 5) revise renewal language to allow for electronic submissions.

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) There are no advantages or disadvantages to the public. Allowing applicants to provide proof of passage of the examination required for initial licensure instead of proof of comparability may benefit a very small number of persons.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.

3) There are no other pertinent matters of interest.

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 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.

The amendments proposed by the Board are less stringent and provide more flexibility in the process of obtaining licensure. There are no alternative regulatory methods other than the promulgation of amended regulations for Chapter 20.

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.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a	a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and
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<p>delineation of one-time versus on-going expenditures</p>	<p>application fees it charges to practitioners for necessary functions of regulation; and b) The agency will not incur additional costs for email notification to persons on the Public Participation Guidelines mailing lists. There will be no on-going expenditures related to this action.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Persons affected by changes would be a small number of applicants for licensure.</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>The Board estimated that there are 3-4 persons per year who apply for licensure by endorsement who have not taken the national examination. There are currently 1420 licensed optometrists with TPA certification and 151 licensed optometrists without TPA. While many optometrists have small businesses, many others work as employees of national optometric chains.</p>
<p>All projected costs of the new regulations or changes to existing regulations 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 licensees for the regulatory changes; a small number of persons will find it less burdensome to qualify for licensure.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact is the addition of options for obtaining licensure by applicants from other states.</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.

There are no alternatives to the proposal that meet the essential purpose of the action to allow more flexibility and reduce the regulatory burden.

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.

The Notice of Periodic Review was published in the Register of Regulations, posted on Townhall and sent to the public participation mailing list for the Board of Optometry with the opportunity for comment from November 5, 2012 to December 5, 2012. There were no comments.

The regulation meets the criteria in Executive Order 14 as it is necessary for public health and the safety of patients receiving eye care from optometrists; it is clearly written and easily understandable. There have been no complaints, no concerns about complexity and no conflict with state or federal law or regulation.

1) In accordance with the Code of Virginia, it is unlawful: *“To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.”*

Therefore, there is a continued need for the regulation setting out criteria for licensure.

2) There were no complaints or comments received from the public.

3) The regulation is organized and written similarly to other chapters promulgated by health regulatory boards; 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 § 54.1-3204, 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, it has been amended 12 times in the last 10 years.

The economic impact of this regulation is minimal for a licensure scheme. Fees of \$150 to \$200 per year are required to maintain a license and do not appear to be burdensome. In the last biennium, there was 8.5% growth in the number of optometrists with TPA certification.

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
10	Sets out requirements for licensure by examination	<p>The amendments in subsection D will clarify that applicants who are licensed in other jurisdictions may apply for licensure by examination if they do not meet the active practice requirement for endorsement (36 out of the past 60 months). The regulations have not provided a clear distinction between the two pathways to licensure – examination or endorsement. Further the applicant does not have to show that he is “currently” licensed in each jurisdiction, only that he is or “has been” licensed and if lapsed, is eligible for reinstatement.</p> <p>The amendments in subsection E clarify the language and remove the option of requiring an applicant who completed the examination more than 5 years prior to application to retake all or part of the examination. Instead, the Board may require completion of up to 32 hours of continuing education, which would be the equivalent of two years worth of CE required for renewal of a license. Language about practice for 36 out of the past 60 months is deleted because an applicant who can demonstrate such practice would be licensed by endorsement.</p>
15	Sets out requirements for licensure by endorsement	<p>Amendments to subsection A will: 1) allow the Board to accept passage of the examination required for initial licensure in another state, rather than requiring the examinations to be “approximately comparable;” and 2) allow an applicant to have licenses in other jurisdictions that are lapsed, provided he has one current license and no pending disciplinary action.</p> <p><i>Comparability of examinations has been very problematic for applicants and the Board. Beginning in 1997, the Virginia Board required passage of Parts I, II, and III on the</i></p>

		<p><i>examination of the National Boards of Examiners in Optometry (NBEO). Some states continued to require their own examination, and Virginia has no access to the content of the NBEO to compare with a state exam. When Virginia gave its own examination, we retained information on the content, but it is virtually impossible to acquire content information from another state. Since the NBEO exam is now the norm, there are very few applicants coming to Virginia without national board scores. For those few (3 or 4 a year), this requirement is almost a total barrier to licensure.</i></p> <p><i>The application for licensure by endorsement requires that the applicant provide information on all states in which he held a license, so the Board can confirm that he is not the subject of a pending or unresolved disciplinary action that would provide a cause for denial. Presently, regulations seem to imply that all such licenses must be current; in fact, the applicant only has to have one current license and the others may be lapsed but eligible for reinstatement.</i></p> <p>Subsection E is deleted because the Board will not be looked for comparability between a licensing examination taken in another jurisdiction and the one required in Virginia.</p>
20	Sets out the fees charged to applicants and licensees	Amendments delete subsection C, which included a reduction in the renewal fees for 2006 to 2008. Since those fees are no longer applicable, they are removed from the regulations.
45	Sets out standards of practice	In subsection F, the date of March 17, 2011 is deleted. When the requirement for an optometrist to post or notify patients of his policy on destruction of patient records was established, practitioners were given a period of time within which to comply. That time has passed, so the date can be removed.
60	Sets out requirements for renewal and reinstatement	Most optometrists now renew their licenses on-line, so they submit the renewal form and required fee electronically. The amendments will make the regulatory language more consistent with the use of technology.