



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

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| Agency Name: | Department of Health Professions – Board of Psychology |
| VAC Chapter Number: | 18 VAC 125-20-10 et seq. |
| Regulation Title: | Regulations Governing the Practice of Psychology |
| Action Title: | Increase Fees |
| Date: | 2/14/2000 |

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board is proposing a new fee structure to comply with a statutory requirement that fees be sufficient to cover board expenditures. The fee structure has been determined in accordance with new *Principles for Fee Development* which are being used to develop fee structures for all boards in the Department of Health Professions. Overall, this will result in an increase in fees for services provided by the Board. For example, the renewal fee will increase from \$200 to \$225 per biennium. An initial licensure fee will be added to the licensure application fee which will increase the cost of applying for licensure from \$150 to \$200. For applicant who have not yet completed a residency, this increase will be offset by a \$50 reduction in the cost of registering a supervisor.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

A new section was added to 18 VAC 125-20-170 to reference the fee for reinstatement following revocation of suspension of a license.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On February 11, 2000, the Board of Psychology adopted final regulations 18 VAC 125-20-10 et seq., Regulations Governing the Practice of Psychology, completing fee changes in compliance with a statutory mandate that the Board collect sufficient fees to cover the cost of administration of the regulatory program.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

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

§ 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.*

Under § 54.1-113 increasing fees is mandatory when expenses are more than ten percent greater than revenue. However the Board may exercise discretion in the amount and type of fees which will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--*Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

These web site address for the text of these statutes is <http://leg1.state.va.us>.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. It is projected that by the close of the 2000-2002 biennium, the board will have a deficit of \$75,994, or 12%, which will increase to \$114,234 or 16% by the end of the 2002-2004 biennium. Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential.

Several factors have contributed to this projected deficit. One is the increase in the Board's regulatory activities over the past two years in response to Executive Order and changes in the scope of practice definitions in statute. The size of the Board increased by two members in 1996, with an accompanying increase in the size of the Regulatory Committee. Current projections have taken into account increases in staff salaries and fringes due to position reallocation and upcoming pay increases and increases in data processing costs due the implementation of a new database system in the agency. Along with the increased expenditures, there has been a decrease in the projected revenue from certified sex offender treatment providers, which were anticipated to increase by 50 applicants per year, but have actually increased at a rate of approximately one per month since the end of the initial "grandfathering" period in August, 1998.

Because of the increased expenditures and reduced revenues, the Board is now compelled to increase renewal fees and application fees for all categories of licensure according to the *Principles for Fee Development*. As a specially funded agency, renewal fees pay the vast

majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation. Adequate funding is essential carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

The reasoning for the establishment of a reinstatement fee for individuals whose licenses have been suspended or revoked is that this expense is incurred at the discretion of an individual who has been found guilty of a serious offense, and it would be unfair to have other licensees bear the expense.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The amendment increases the renewal fee by \$25 per biennium for all licensure categories. The application fee is amended to more accurately reflect the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. An initial licensure fee has been included based on the average time from issuance of the initial license to the first renewal. Based on the estimated cost to process and review a registration of residency, the registration fee is reduced by \$50 for initial registrations of residency and by \$75 for subsequent registrations.

The amended fee for license lapsed less than one year is composed of the renewal fee plus 35. For licenses which have lapsed one renewal period, the board is establishing a reinstatement requirement with a fee based on a credential review fee, the late fee, and ½ of the current renewal fee, since the reissue is likely to take place after part of the renewal period has already passed. This will replace the current reinstatement requirement of paying the renewal fee and late penalty fee for each year the license has lapsed.

A new fee is established for reinstatement of a license which has been suspended or revoked to cover the estimated cost of a hearing, including Board member per diems, staff time and associated expenses

The Board is proposing fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

ISSUE 1. Uniformity in renewal and application fees across professions.

As is stated in the *Principles*, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Therefore, the Board has established the same renewal fee for all three licensure categories based on the cost of administering the disciplinary program for practitioners licensed to practice independently. The increase in the renewal fee is slight, representing a \$25 increase over a biennium. The proposed fee is comparable with the renewal fees recently adopted by the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals for its three independent practice licensure categories. Likewise, the education and experience requirements for the three licensure categories are similar, resulting in a comparable amount of work to process and review applications. \$75 of the application processing and initial licensure fee is attributed to credentials review based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. The fees initial registrations of residency supervisors and subsequent registrations were established based on the same principles. The same fees have been proposed by the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals based on similar costs for application review.

Advantages and disadvantages to the licensees

All individuals licensed or certified by the Board of Psychology will experience increased renewal fees. In 1996, in spite of a slight deficit, the Board reduced its renewal fees from \$95 annually to \$125 biennially to accomplish the transition of clinical psychologists from the board of Medicine to the Board of Psychology with minimal disruption (\$125 was the biennial renewal fee assessed by the Board of Medicine). Included with this change was an extension of the renewal deadline without charge for psychologists who were licensed under the Board of Psychology to bring them into the biennial renewal cycle. These changes resulted in deepening the already existing deficit. To offset the deficit, the Board raised the renewal fee to \$200 effective April 1, 1998. Although the projections at the time indicated that the deficit would be corrected through June 30, 2000, current projections indicate that the deficit will be slightly over 10% for the upcoming biennia (13% at the end of the 1998-2000 biennium and 12% at the end of the 2000-2002 biennium) increasing to 16% at the end of the 2002-2004 biennium. Contributing factors to this change include an increase in Board size from seven to nine members in 1996, increases in staff salaries and fringes due to position reallocations and upcoming pay increases, increases in the agency's data processing costs due to implementation of a new database system, increased regulatory activity for the board and a lower number of applicants for the sex offender treatment provider certification than originally projected (10 per year actual vs. 50 per year originally anticipated). The budget projections now require that the renewal fees be increased by \$25 per biennium. This in turn increases the application processing fee because under the new principles, a portion of the fee is allocated for ½ of a renewal period to cover the initial licensure

period on average. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure, education and experience to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation.

ISSUE 2: Establishment of initial licensure fees.

For all professions governed by the Board, the initial licensure fee has historically been considered part of the application fee. This allowed for immediate processing of the license following notification of completion of the licensure requirements for an applicant. However, the fee was not developed according to any set formula consistent among boards in the agency. Under the new *Principles for Fee Development*, the initial application fees should include the cost of credentials review, an appropriate portion of the license fees, and cost of the wall certificate.

One method of assessing an initial licensure fee is prorating the fee based on the amount of time remaining in the renewal period. The Board opted not to prorate fees because other boards in the agency have determined that the additional steps involved (assessing fee, notifying applicant, processing check, notifying applicant again if check is not mailed until the next fee period begins, etc.) result in delays in licensure processing and can create more burden and lost income for the applicant than any benefit from the prorated fees. The amendments establish a uniform fee for all applicants to cover ½ of the renewal period, which is the average initial licensure period.

Advantages and disadvantages to the licensees

As stated above, the advantage of not prorating fees is that the initial license can be issued as soon as the board has determined that the requirements for licensure are satisfied, without having to contact the applicant with the amount due and then waiting for the fee to arrive

ISSUE 3. Establishment of different fees for renewing an expired license versus reinstating a lapsed license.

Currently, the Board's regulations require back fees and penalty fees for each lapsed renewal period. Under this rule, some individuals have paid close to \$2000 to return to Virginia practice. In conformance with the *Principles for Fee Development*, the Board has established a penalty fee assessed at 35% of the renewal fee for licenses which have lapsed one renewal period, and a reinstatement application requirement for individuals whose licenses have lapsed beyond one renewal period. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the proposed reinstatement fee includes ½ of the current renewal fee (for the average time remaining within the renewal period) the late fee, and a credential review fee.

Advantages and disadvantages to the licensees

For all categories of licensure, the penalty fee for late renewal within the first renewal period will increase, which is a disadvantage to licensees. However, the amendment presents an advantage for individuals whose licenses have lapsed more than one renewal period.

Under the current regulations, individuals who have lapsed more than two renewal cycles must pay all back fees and penalty fees to be reinstated. This can result in exorbitant fees for individuals who have been absent from Virginia for many years. The amendment establishes a flat fee for reinstatement that will not increase based on years of absence.

ISSUE 5. Reinstatement after revocation

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. The estimated cost of a hearing, including Board member per diems, staff time and associated expenses is approximately \$500. The Board is establishing a new fee that will require individuals whose licenses have been suspended or revoked to incur the cost of the reinstatement hearing.

ISSUE 6. Uniformity among boards for setting miscellaneous fees.

In setting fees for miscellaneous activities of the Board, the *Principles* call for uniformity among boards and regulated entities. The Board is establishing fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

Advantages and disadvantages to the licensees

The advantage of the amendments is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards.

Advantage or disadvantages to the public

Fee increases should have no disadvantage to the consuming public. There would be considerable disadvantages to the public if the Board took no action to address its deficit and increase fees to cover its expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of education programs. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against regulated individuals. In addition, there may be delays in adjudicating cases of violations of the standards of practice, resulting in potential danger to clients who are often emotionally vulnerable to unscrupulous practitioners.

Advantage or disadvantage to the agency

Fee increases will bring the Board into compliance with § 54.1-113 which requires that a deficit of more than 10% be corrected by an increase in fees. The increases will insure that the agency can cover the costs for staff, data processing, board meetings, mailing materials and correspondence to applicants and other expenses incurred in the operation of the regulatory program. The increases present are no disadvantages to the agency.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No written or verbal public comment on the proposed fee changes was received during the 60 day public comment period.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 125-20-30. Fees required by the Board.

- The fee for registering a residency is reduced from the current \$100 to \$50. This is based on the administrative cost of processing the paperwork and having the Board review the documentation.
- The fee to add change a residency supervisor is reduced by half the cost of the original registration to \$25.
- A new application processing and initial licensure fee of \$200 is established to cover the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.
- The renewal fee is increased from the current \$200 biennial renewal to a \$225 renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The late renewal fee is increased from \$10 to \$80 to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.

- The fee to verify a license to another jurisdiction is increased from \$10 to \$25 to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- A separate fee of \$5 is established for a duplicate license to reflect the actual cost of printing, processing, and mailing a duplicate license.
- The returned check fee is increased from \$15 to \$25 to reflect the actual administrative cost for processing and collecting on a returned check; it is proposed to be the same fee for all boards within the Department.
- A new fee of \$270 is established for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of Board review of the reinstatement application plus ½ of the annual renewal fee to cover the average time remaining in a renewal period, plus the penalty fee for late renewal.
- A new fee of \$500 is established for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- The payment instruction has been amended to clarify that some licensure processes are performed by a vendor, requiring payment of the fee to the vendor and not the Board, as set forth in the application instructions.

18 VAC 125-20-130. Late renewal; reinstatement.

Amendments are proposed to reference the reinstatement application process and the reinstatement fee, which replaces the re-review fee in the current regulations. The reinstatement fee is established based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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.

The changes will have no effect on the authority or rights of parents in the education, nurturing and supervision of their children or on the economic self-sufficiency, self pride and assumption of responsibility. Fee increases will allow the regulatory program to operate without delays,

which may strengthen the marital commitment for individuals or their spouses who need psychological care. The increase of \$12.50 per year in the fee to renew and maintain a license to practice psychology should not affect the cost of psychological services in Virginia. The increase in the application fee is offset by the decrease in the registration of residency fee, and will not affect disposable family income for applicants. The most significant impact will be on individuals who seek reinstatement after revocation or suspension of a license, but it is considered appropriate to have these costs borne by the offending licensee who voluntarily seeks reinstatement, rather than the entire population of licensees, the vast majority of which have not committed any offense.