



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-110-10 et seq.
Regulation Title:	Regulations Governing the Practice of Licensed Acupuncturists
Action Title:	Written documentation for diagnostic examination
Date:	6/13/00

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Amendments to regulation are required in order to conform to an enactment clause in Chapter 814 of the 2000 Acts of the Assembly requiring the Board to promulgate regulations within 280 days of enactment for the requirement of a standard form recommending a diagnostic examination for provision by the licensed acupuncturist to the patient.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The legal authority to promulgate the emergency regulation is in second enactment clause of Chapter 814 of the 2000 Acts of the Assembly, which states: "That the Board of Medicine, in consultation with the Advisory Board on Acupuncture, shall promulgate regulations, including education and training requirements for doctors of medicine, osteopathy, chiropractic and podiatry who utilize acupuncture, and including the requirement for a standard form recommending a diagnostic examination for provision to the patient by the acupuncturist, to implement the provisions of this act within 280 days of enactment."

The Office of the Attorney General has certified that the "emergency situation" which exists is specified in § 9-6.14:4.1 (C)(5)(ii) of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The law requires the licensed acupuncturist to either get written documentation that the patient has received a diagnostic examination by a licensed practitioner of medicine, osteopathy, chiropractic or podiatry or to provide a written recommendation for such an examination to the patient. The enactment clause requires the board to promulgate regulations for this requirement, including a standard form to be signed by the patient, within 280 days of enactment of the law.

While the Code of Virginia no longer requires that a person get a medical examination and referral prior to receiving acupuncture, concerns remain that a medical problem will go undiagnosed and untreated during the course of acupuncture treatment. Therefore, the

requirement for a written recommendation for an examination by a physician will provide a measure of protection for a patient's safety and health.

It is not anticipated that any issues related to the written recommendation form will arise. Many licensed acupuncturists already utilize such a form for their own protection and their concerns about their patients.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

Since there was no alternative to the legal mandate for a written recommendation for an examination, the Advisory Committee on Acupuncture and the Board of Medicine did not consider an alternative to the requirement. It did consider alternatives to the wording of the standard form to implement the requirement and reviewed those currently in use by licensed acupuncturist and required by other states. The form adopted requires that the patient will receive a copy, a copy will be maintained in the patient's file, and that the licensed acupuncturist has a responsibility to ensure that the recommendation has been translated for the non-English patient. The content of the form was unanimously approved by both the Advisory Committee and the Board.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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 Board has determined that there is no impact on the family or family stability as a result of amendments to regulations.