



Exempt Action Final Regulation Agency Background Document

Agency name	Board of Counseling , Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC115-20-10 et seq. 18VAC115-50-10 et seq. 18VAC115-60-10 et seq.
Regulation title	Regulations Governing the Practice of Counseling Regulations Governing The Practice Of Marriage And Family Therapy Regulations Governing The Practice Of Licensed Substance Abuse Treatment Practitioners
Action title	Conforming regulation to statute
Final agency action date	5/11/07
Document preparation date	5/23/07

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board has made a regulatory change which is exempt from provisions of the Administrative Process Act to conform a provision in the standards of practice to the Code of Virginia. The Senior Assistant Attorney General who provides counsel has advised the Board that the requirement to report information about another mental health professional to the Department of Health Professions is inconsistent with provisions of law. Section 54.1-2400.4 requires a mental health professional to inform his client of his right to report:

§ 54.1-2400.4. Mental health service providers duty to inform; immunity; civil penalty.

A. Any mental health service provider, as defined in § 54.1-2400.1, shall, upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, advise his patient of his right to report such misconduct to the Department of Health Professions, hereinafter referred to as the "Department."

B. The mental health service provider shall provide relevant information to the patient, including, but not limited to, the Department's toll-free complaint hotline number for consumer complaints and written information, published by the

Department of Health Professions, explaining how to file a report. The mental health service provider shall document in the patient's record the alleged misconduct, the category of licensure or certification, and approximate dates of treatment, if known, of the mental health service provider who will be the subject of the report, and the action taken by the mental health service provider to inform the patient of his right to file a complaint with the Department of Health Professions.

C. Any mental health service provider informing a patient of his right to file a complaint against a regulated person and providing the information required by this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

D. Notwithstanding any other provision of law, any person required to inform a patient of his right to file a complaint against a regulated person pursuant to this section who fails to do so shall be subject to a civil penalty not to exceed \$100.

Therefore, the standard for all licensed professions under the Board of Counseling is amended to require practitioners to advise their clients of their right to report, rather requiring the practitioner to report information of which he may become aware indicating another mental health professional may have engaged in unprofessional conduct.

This action is exempt from the Virginia Administrative Process Act in § 2.2-4006 A 4: “Regulations that are...Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.”

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 May 11, 2007, the Board of Counseling adopted an exempt action to amend Chapter 20 - Regulations Governing the Practice of Counseling; Chapter 50 - Regulations Governing The Practice Of Marriage And Family Therapy; and Chapter 60 - Regulations Governing The Practice Of Licensed Substance Abuse Treatment Practitioners to conform the standards of practice of § 54.1-2400.4 of the Code of Virginia.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

There is no impact of this regulatory action on the institution of the family and family stability.