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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Counseling, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC115-90
<b>VAC Chapter title(s)</b>	Regulations Governing the Licensure of Art Therapists
<b>Action title</b>	New regulations
<b>Date this document prepared</b>	10/16/20

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Chapter 301 of the 2020 General Assembly requires the Board to promulgate regulations governing the practice of art therapy. The Code specifies the credential that will be considered as qualification for licensure as an art therapist and as an art therapy associate. The Board will adopt additional requirements similar to other licensed professions for a fee structure, renewal or reinstatement, continuing competency, supervision of persons in training, and standards of practice.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

N/A

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

Chapter 301 of the 2020 Acts of the Assembly mandates that the Board promulgate regulations for the licensure of art therapists: *The Board shall adopt regulations governing the practice of art therapy, upon consultation with the Advisory Board on Art Therapy established in § [54.1-3517](#).* To do so, the Board will adopt a new chapter, 18VAC115-90-10 et seq., Regulations Governing the Practice of Art Therapy.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’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 Counseling 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:*

- 1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege 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, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

Regulations on licensure of art therapists are promulgated in accordance with:

§ [54.1-3500](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Appraisal activities" means the exercise of professional judgment based on observations and objective assessments of a client's behavior to evaluate current functioning, diagnose, and select appropriate treatment required to remediate identified problems or to make appropriate referrals.

*"Art therapist" means a person who has (i) completed a master's or doctoral degree program in art therapy, or an equivalent course of study, from an accredited educational institution; (ii) satisfied the requirements for licensure set forth in regulations adopted by the Board; and (iii) been issued a license for the independent practice of art therapy by the Board.*

*"Art therapy" means the integrated use of psychotherapeutic principles, visual art media, and the creative process in the assessment, treatment, and remediation of psychosocial, emotional, cognitive, physical, and developmental disorders in children, adolescents, adults, families, or groups.*

*"Art therapy associate" means a person who has (i) completed a master's or doctoral degree program in art therapy, or an equivalent course of study from an accredited educational institution; (ii) satisfied the requirements for licensure set forth in regulations adopted by the Board; and (iii) been issued a license to practice art therapy under an approved clinical supervisor in accordance with regulations of the Board.*

"Board" means the Board of Counseling.

"Certified substance abuse counseling assistant" means a person certified by the Board to practice in accordance with the provisions of § [54.1-3507.2](#).

"Certified substance abuse counselor" means a person certified by the Board to practice in accordance with the provisions of § [54.1-3507.1](#).

"Counseling" means the application of principles, standards, and methods of the counseling profession in (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using

treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health.

"Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct, and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

"Marriage and family therapist" means a person trained in the appraisal and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques.

"Marriage and family therapy" means the appraisal and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques and delivery of services to individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.

"Practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, standards, and methods of the counseling profession, which shall include appraisal, counseling, and referral activities.

"Practice of marriage and family therapy" means the appraisal and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques, which shall include assessment, treatment, and referral activities.

"Practice of substance abuse treatment" means rendering or offering to render substance abuse treatment to individuals, groups, organizations, or the general public.

"Professional counselor" means a person trained in the application of principles, standards, and methods of the counseling profession, including counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

"Qualified mental health professional" includes qualified mental health professionals-adult and qualified mental health professionals-child.

"Qualified mental health professional-adult" means a qualified mental health professional who provides collaborative mental health services for adults. A qualified mental health professional-adult shall provide such services as an employee or independent contractor of the Department of

Behavioral Health and Developmental Services or the Department of Corrections, or as a provider licensed by the Department of Behavioral Health and Developmental Services.

"Qualified mental health professional-child" means a person who by education and experience is professionally qualified and registered by the Board to provide collaborative mental health services for children and adolescents up to 22 years of age. A qualified mental health professional-child shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services or the Department of Corrections, or as a provider licensed by the Department of Behavioral Health and Developmental Services.

"Qualified mental health professional-trainee" means a person who is receiving supervised training to qualify as a qualified mental health professional and is registered with the Board.

"Referral activities" means the evaluation of data to identify problems and to determine advisability of referral to other specialists.

"Registered peer recovery specialist" means a person who by education and experience is professionally qualified and registered by the Board to provide collaborative services to assist individuals in achieving sustained recovery from the effects of addiction or mental illness, or both. A registered peer recovery specialist shall provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services, a provider licensed by the Department of Behavioral Health and Developmental Services, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

"Residency" means a post-internship supervised clinical experience registered with the Board.

"Resident" means an individual who has submitted a supervisory contract to the Board and has received Board approval to provide clinical services in professional counseling under supervision.

"Substance abuse" and "substance dependence" mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.

"Substance abuse treatment" means (i) the application of specific knowledge, skills, substance abuse treatment theory, and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education, or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric, or legal resources when such referrals are indicated.

"Supervision" means the ongoing process, performed by a supervisor, of monitoring the performance of the person supervised and providing regular, documented individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person supervised.

§ [54.1-3503](#). Board of Counseling.

The Board of Counseling shall regulate the practice of counseling, substance abuse treatment, *art therapy*, and marriage and family therapy.

**Article 3. Art Therapists.**

**§ 54.1-3516. Art therapist and art therapy associate; licensure.**

*A. No person shall engage in the practice of art therapy or hold himself out or otherwise represent himself as an art therapist or art therapy associate unless he is licensed by the Board. Nothing in this chapter shall prohibit a person licensed, certified, or registered by a health regulatory board from using the modalities of art media if such modalities are within his scope of practice.*

*B. The Board shall adopt regulations governing the practice of art therapy, upon consultation with the Advisory Board on Art Therapy established in § 54.1-3517. Such regulations shall (i) set forth the requirements for licensure as an art therapist or art therapy associate, (ii) provide for appropriate application and renewal fees, and (iii) include requirements for licensure renewal and continuing education.*

*C. In the adoption of regulations for licensure, the Board shall consider requirements for registration as a Registered Art Therapist (ATR) and certification as a Board Certified Art Therapist (ATR-BC) with the Art Therapy Credentials Board and successful completion of the Registered Art Therapist Board Certified Art Therapist examination.*

*D. A license issued for an art therapy associate shall be valid for a period of five years. At the end of the five-year period, an art therapy associate who has not met the requirements for licensure as an art therapist may submit an application for extension of licensure as an art therapy associate to the Board. Such application shall include (i) a plan for completing the requirements to obtain licensure as an art therapist, (ii) documentation of compliance with the continuing education requirements, (iii) documentation of compliance with requirements related to supervision, and (iv) a letter of recommendation from the clinical supervisor of record. An extension of a license as an art therapy associate pursuant to this subsection shall be valid for a period of two years and shall not be renewable.*

*2020, c. 301.*

**§ 54.1-3517. Advisory Board on Art Therapy; membership; terms.**

*A. The Advisory Board on Art Therapy (the Advisory Board) is hereby established to assist the Board in formulating regulations related to the practice of art therapy. The Advisory Board shall also assist in such other matters relating to the practice of art therapy as the Board may require.*

*B. The Advisory Board shall have a total membership of five nonlegislative citizen members to be appointed by the Governor as follows: three members shall be licensed art therapists, one member shall be a licensed health care provider other than an art therapist, and one member shall be a citizen at large.*

*C. After the initial staggering of terms, members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.*

**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The Board will promulgate regulations to establish qualifications for education, examination, and experience that will ensure minimal competency for issuance or renewal of licensure as art therapists to protect the health and safety of clients or patients who receive their services. Amendments are also necessary to ensure there are standards for confidentiality, patient records, dual relationships, and informed consent to protect public health and safety.

### Substance

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Chapter 301 of the 2020 General Assembly requires the Board to promulgate regulations governing the practice of art therapy. The Board will adopt requirements similar to other licensed professions for a fee structure, renewal or reinstatement, continuing competency, supervision of persons in training, and standards of practice.

Subsection B of § 54.1-3516 of the Code mandates that the Board “*adopt regulations governing the practice of art therapy, upon consultation with the Advisory Board on Art Therapy established in § [54.1-3517](#). Such regulations shall (i) set forth the requirements for licensure as an art therapist or art therapy associate, (ii) provide for appropriate application and renewal fees, and (iii) include requirements for licensure renewal and continuing education.*”

Subsection C of § 54.1-3516 of the Code requires that the Board consider *requirements for registration as a Registered Art Therapist (ATR) and certification as a Board Certified Art Therapist (ATR-BC) with the Art Therapy Credentials Board and successful completion of the Registered Art Therapist Board Certified Art Therapist examination.*” While not mandated to do so, the Advisory Board concurred that the credentials cited in the Code are the best measure of minimal competency for the profession. There will also be regulations for the issuance of an art therapy associate with the specific requirements set forth in subsection D of § 54.1-3516 of the Code.

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are no viable alternatives because the Code of Virginia requires the Board to adopt regulations. The Board can only enforce licensing and renewal qualifications, fees, and standards of practice that are set forth in regulation. There is no alternative to regulation.

### **Periodic Review and Small Business Impact Review Announcement**

This NOIRA is not being used to announce a periodic review or a small business impact review.

### **Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The Board of Counseling is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Suite 300, Richmond, VA 23233; phone (804) 367-4688; fax (804) 527-4434; [Elaine.yeatts@dhp.virginia.gov](mailto:Elaine.yeatts@dhp.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.