Virginia Regulatory Town Hall

Final Regulation
Agency Background Document

Agency Name:	Board of Medicine, 18 VAC 85
VAC Chapter Number:	18 VAC 85-40-10 et seq.
Regulation Title:	Regulations Governing the Practice of Respiratory Care Practitioners
Action Title:	Fee increase
Date:	February 11, 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Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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 of Medicine has adopted amendments to its regulations in order to increase certain fees pursuant to its statutory mandate to levy fees as necessary to cover expenses of the board. Biennial renewal fees for respiratory care practitioners will increase from $50 to $135; the application fee will increase from $100 to $130. Fees sufficient to fund the operations of the Board are essential for activities such as licensing, approval of applicants for examination, investigation of complaints, and adjudication of disciplinary cases.

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.

In the adoption of final amended regulations, the Board added a fee for renewal of an inactive license, which it has the authority to issue. An inactive fee is set at half the cost of an active renewal fee.

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 10, 2000, the Board of Medicine adopted final amended regulations, 18 VAC 85-40-10 et seq., Regulations Governing the Practice of Respiratory Care Practitioners with no changes from the proposed amended regulations.

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

Regulations of the Board of Medicine were promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 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.

The proposed regulation is mandated by § 54.1-113; however the Board must exercise some 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.

The Assistant Attorney General who provides counsel to the Board has certified that the amended reulations are consistent with statutory authority and do not conflict with existing law.

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.

The purpose of the proposed amendments is to establish fees sufficient to cover the administrative and disciplinary activities of the Board of Medicine. Without adequate funding, the licensing of practitioners licensed by the Board and approval of candidates to sit for examinations could be delayed. In addition, sufficient funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.
The Virginia Board of Medicine needs to increase their fees to cover expenses for essential functions of licensing, investigation of complaints against practitioners licensed by the Board, adjudication of disciplinary cases, and the approval of candidates and administration of examinations.

In its earlier projection of the deficit within the Board of Medicine, the Department had anticipated that the deficit would be $861,956 or 9.3% of the total budget by the end of the 2002 biennium. In its latest analysis of funding and expenditures under the current fee structure for programs under the Board of Medicine, the following deficit has been projected:

FY Ending	Board	Amount	Percent
6/30/02	Medicine	-$3,776,553	-36.8%

Two factors have contributed to a greater than projected increase in the deficit and make the need for a fee increase even more urgent: (1) there has been a sharp increase in the number of doctors being enrolled in the Health Practitioner Intervention Program. The Medical Society of Virginia, which operated a volunteer peer assistance program, has discontinued its program and turned over all the participants to the HPIP program funded by the Board. Usage of HPIP services by persons regulated under the Board of Medicine is anticipated to continue to escalate over the next two biennia; and (2) the percentage of change in the number of licensees and the accompanying revenue originally projected by the Finance Office for the next two biennia did not project for the impact of inactive licensure The number of regulants was projected with current fees which did not account for a reduced fee for approximately 10% of licensees in categories with inactive licensure.

§ 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 2002 fiscal year, the Board of Medicine with its current fee structure would incur a deficit of $3,776,553 or approximately 36.8% of its total budget, and that the deficit will continue to escalate. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential.

Despite the efficiencies and reductions in staff (MEL from 132 to 120) which the Department and the Board have undertaken in the past five years, funding from fees has failed to keep up with expenditures.

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.

18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners

Amendments to **18 VAC 85-40-80** are proposed as follows:

- The fee for application for licensure as a respiratory care practitioner would increase from $100 to $130 and would now include $50 for application processing and credential review, the cost of approximately half of a biennial renewal and license ($70), and the cost of the wall certificate ($10).

- The proposed biennial renewal fee increases from $50 to $135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board. A renewal fee for an inactive license was also adopted.

- Proposed regulations would establish a late fee of $50 for a respiratory care practitioner who renews the expired license within the biennium (approximately 35% of the biennial renewal).

- If the license is allowed to lapse beyond the biennium, it would require reinstatement with an application review fee ($60), payment of the late fee and one-half the biennial renewal fee for a combined total of $180.

- Other fees set forth in regulations would be identical to those assessed to other licensees of the Board of Medicine and are determined by the actual costs to the Board for the particular activity or function. They include:

  $15 for producing a duplicate wall certificate
  $5 for producing and sending a duplicate license
  $2000 for reinstatement of a license pursuant to § 54.1-2921
  $25 for processing and collecting on a returned check
  $10 for verifying a license to another jurisdiction
  $25 for sending all or part of a transcript or certification of grades

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.

Prior to consideration of amendments to regulations by the Board of Medicine, the Department of Health Professions set forth a set of principles by which all boards would be guided in the development of regulations. The "Principles for Fee Development" are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the Principles served to guide the Board in the development of an appropriate and necessary fee.

Based on the Principles, the Board of Medicine established certain policies to be applied in the development of its proposed fees. According to its policy, certain occupations regulated by the Board were grouped according to the amount of Board resources consumed by those occupations, as determined by rates of complaints and disciplinary cases, personnel required for licensing, discipline and other activities, and other allocated costs. It was agreed that the practitioners of medicine, osteopathy, podiatry and chiropractic should be grouped as occupation category #1; practitioners of physical therapy, occupational therapy, respiratory therapy, radiologic technology, and licensed acupuncturists and physician assistants should be grouped as occupation category #2. Exceptions were made for persons who had restricted or limited licensure and who practiced under supervision rather than as independent professionals. Therefore, persons holding licensure as interns, residents, limited professorial licenses or fellows, physical therapist assistants or radiologic technologists-limited were categorized differently from fully licensed practitioners. The secondary license of physician acupuncturist was also recognized as an exception since persons who hold that license must also hold an active license as a doctor of medicine, osteopathy, podiatry or chiropractic.

ISSUE 1: Proration of initial licensure fees based on timing within the renewal cycle an applicant is initially licensed.

It is unknown at the time of application for initial licensure when or if the applicant will qualify. Applicants may be delayed or ineligible because they fail to subsequently submit required information (such as transcripts or verification from other states), do not meet substantive requirements (education, experience, moral character, etc.) or fail to pass an examination. While most candidates are eventually found eligible, it is impossible to predict when or if any given candidate will be licensed.

Therefore, in order to prorate an initial 'license fee' for the current period of licensure it would require the assessment, after the determination of eligibility, of each newly qualified candidate (estimated to be 5100 per year, including licensure in all categories by examination and endorsement). To accomplish this, the Department would need to incur a cost to program automated systems to generate assessments in various occupational categories. In addition to generating the assessment, the agency will be required to receive and account for the additional payment. This task could possibly be contracted out, as we do with a number of lock box transactions. All exceptions to lock box transactions however, are handled in-house, which is an activity that would result in additional administrative costs.

Prorating of fees would have negative impact on prompt licensing of nurses. It is likely that it would add a minimum of 14 days and likely average 21 days to the time it will take to issue a license after approval (the period to generate an assessment, mailing out, writing of a check, return mail, and accounting for the fee). In many cases a candidate is legally prohibited from employment until the license is in hand. Therefore, the equity that may be achieved by prorating fees will not be of sufficient value to lead to its implementation. During the two to three weeks of delay, the applicant could have been working with a license issued promptly upon approval by the Board. The additional income earned during that period would far exceed the small amount of the initial licensure fee that might have been saved by a system of proration.

Advantages and disadvantages to the licensees

As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded to the board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation. All practitioners newly licensed by the Board of Medicine receive at least one half of a biennial renewal cycle, which is the amount included in the initial application and licensure fee. Therefore, there would be no advantage to prorating the initial licensure fee.

ISSUE 2. Uniformity in renewal and application fees across similar 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. Professions that are similar in the allocated cost of personnel, data processing and other administrative functions, in their rate of discipline, and in their participation in the Health Practitioner Intervention Program (HPIP) have similar fees adopted.

Professions licensed by the Board which have similar rates of discipline and administrative expenditures would have similar fees set in the proposed regulations. Current regulations are inconsistent in the fee structure for radiologic technologists, licensed acupuncturists, physical therapists, occupational therapists, physician assistants and respiratory care practitioners. Proposed regulations would categorize all those professions as Occupation Category #2 and set identical renewal fees based on a percentage of 56% of the renewal fee for Occupation #1. The percentage was calculated on the percentage of total board cost which is attributable only to Occupation #1, primarily the disciplinary expenditures of the board. Within Category #2, there are two unique fees - an additional $10 in the application fee for physical therapists, since there is an additional process for approving candidates to sit for the examination; and a $15 fee for review and approval of a practice protocol submitted by a physician assistant when he has a change is his employment status or responsibilities.

Two professions, radiologic technologist-limited and physical therapist assistant are categorized as Occupation Category #3 because they are limited in their scope of practice and must practice under the supervision of fully licensed persons. The Board determined that a lesser renewal fee was appropriate and equitable for those two professions. Again, there is an additional $10 for an application from a physical therapist assistant to cover the cost of approving the applicant to sit for the examination.

Advantages and disadvantages to the licensees

Most practitioners licensed by the Board of Medicine will experience increased renewal fees under the proposed regulations. 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, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

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

Currently, all Board regulations require a late fee for renewal of an expired license, and most of the regulations provide that the fee is cumulative for as long as the license is lapsed. For a practitioner who chooses not to practice in Virginia for a period of time (for whatever reason), the accumulation of late fees in addition to the reinstatement fee may become excessive. In the Principles, there is a distinction made between those who are expired (have failed to renew within one renewal cycle) and those who are lapsed (have failed to renew beyond one renewal cycle). The appropriate late fee for an expired license should be set at no more than 35% of the renewal fee; the current renewal fee must also be paid. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the reinstatement fee should include the current renewal fee, the late fee, and a credential review fee.

Reinstatement of a license which has been revoked or for which reinstatement following suspension has been denied necessitates additional costs of a pre-hearing investigation (approximately 15 to 20 hours), preparation of legal documents (5 to 10 hours of time by a legal assistant) and a hearing before the Board (including per diem for members, travel expenses, and time for the office of the Attorney General). The proposed fee of $2000 for reinstatement of such a license was determined by a calculation of the actual cost, which the Board believes should be paid by the applicant and not supported by renewal fees from other licensees.

Advantages and disadvantages to the licensees

There is an advantage to having consistency in the Board's policy on payment of late fees and reinstatement fees. Currently, some regulations state that the fees are cumulative for as long as the license is lapsed and others do not. Reinstatement fees range from $50 for a radiologic technologist to $225 for a physical therapist; yet they are categorized in Occupation #2 and have similar costs to the board.

For those licensees who are late in paying a renewal fee (approximately 700 each year), there will be an increased cost. For some licensees, the cost of reinstating a license beyond the two-year renewal cycle will increase, while for others the cost will decrease.

For those who seek reinstatement after revocation (approximately 8 per year), the cost will increase substantially from $750 to $2000.

ISSUE 4. Uniformity among boards for setting miscellaneous fees.

In setting proposed fees for miscellaneous activities of the Board, the Principles call for uniformity among boards and regulated entities. Such activities as replacement of a duplicate

license, duplicate certificate, or processing and collecting on a bad check are similar for all boards and should be based on cost estimates provided by the Deputy Director for Finance of the Department.

Advantages and disadvantages to the licensees

The advantage of proposed regulations 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. For licensees of the Board of Medicine, the fee for a duplicate license will be reduced from $10 to $5; the fee for a duplicate wall certificate will be reduced from $25 to $15. The fee for a returned check will be established in regulation at $25.

Advantage or disadvantages to the public

Fee increases proposed by the Board of Medicine should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide medical services to the public. For example, an increase in the biennial renewal fee will result in an additional $42.50 per year for a respiratory therapist's license.

There would be considerable disadvantages to the public if the Board of Medicine 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 candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against doctors and other licensees. In addition, there may be delays in adjudicating cases of substandard care, abuse or other violations, resulting in potential danger to the patients who are often the most sick and vulnerable consumers in the Commonwealth.

Advantages or disadvantage to the agency:

As is stated above, the consequence of not increasing fees of the Board of Medicine would be a reduction in services and staff, resulting in delays in licensing and reductions in the cases investigated and brought through administrative proceedings to a hearing before the Board. The Board of Medicine and the Department of Health Professions are solely funded by the fees charged to applicants and licensees. If higher fees are not adopted, the agency would have to cut its staff, both within the Board of Medicine and within other divisions of the Department of Health Professions since 29% of the costs of the agency is dependent on revenues from the Board of Medicine.

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.

A Public Hearing before the Board of Medicine was held on December 3, 1999 at which no comment was received.

Proposed regulations were published in the Virginia Register of Regulations on November 22, 1999. Public comment was requested for a 60-day period ending January 21, 2000, and none was received.

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 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners

Amendments to **18 VAC 85-40-80** are proposed as follows:

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- The proposed biennial renewal fee increases from $50 to $135 and reflects the cost of the administrative and disciplinary activities of the Board of Medicine and the allocated costs of the Department. The biennial renewal fee is consistent with similar practitioners licensed by the Board. An inactive renewal fee of $70 was also adopted.

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  $10 for verifying a license to another jurisdiction
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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 Board has reviewed the adopted regulations and concluded that the amendments have no effect on strengthening the authority and rights of parents, on economic self-sufficiency, or on the marital commitment. An increase in fees will have a very minor effect on disposable family income; for respiratory care practitioners, there will be an additional cost of $42.50 per year to retain an active license to practice.