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

<b>Agency name</b>	Board of Optometry, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC105-20-10 et seq.
<b>Regulation title(s)</b>	Regulations Governing the Practice of Optometry
<b>Action title</b>	Inactive license
<b>Date this document prepared</b>	3/5/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

In response to a petition for rulemaking, the Board has decided to promulgate regulations to issue inactive licenses. The intent is to allow licensees who are no longer practicing, either because they have located to another state or have retired, to place their Virginia licenses in an inactive status, which will allow them to reactivate should they decide to resume practice.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Regulations of the Board of Optometry are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to issue inactive licenses.

**§ 54.1-2400. General powers and duties of health regulatory boards.**--*The general powers and duties of health regulatory boards shall be:*

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*6. To promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 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.*

*12. To issue inactive licenses or 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 licenses or certificates.*

### Purpose

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

The purpose is to promulgate regulations for the issuance of inactive licenses for optometrists. Such regulations will include a provision that an inactive license does not authorize an optometrist to practice in Virginia and provisions for evidence of continued competency in order to reactivate an inactive license. All provisions are necessary to protect patients receiving optometric services from being seen by doctors who have not maintained continuing education and competency.

### Substance

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

The Board intends to amend the following sections relating to inactive licenses:

Section 20 – Fees set in accordance with Fee Principles for all boards

- A fee for an inactive license (set at ½ the cost of an active license)

- A fee for late renewal of an inactive license (set at approximately 1/3 the cost of the renewal)
- A fee for reactivation to active status (set at the difference between the renewal fee for an active license and the fee for an inactive license)

Section 60 – Renewal of licensure; reinstatement; renewal fees

Section 60 will be amended to include provisions for requesting an inactive license and for reactivation of a license. Reactivation will require evidence of continuing education and/or evidence of active practice in another state. There will also be a provision stating that an inactive license does not authorize the practice of optometry in Virginia.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

Since the statute requires that the provisions for issuing an inactive license be set in regulation, amendments are necessary to make these changes. There are no alternatives that meet the essential purpose of protection of the public.

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or

by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

A regulatory panel will not be used to develop the proposed regulation, which will be drafted by the Regulatory Committee of the Board in consultation with representatives of the optometric community.