



Proposed Regulation Agency Background Document

Agency name	Board of Psychology, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 125-30
Regulation title	Regulations Governing the Certification of Sex Offender Treatment Providers
Action title	Experience requirement for certification; continuing education
Document preparation date	2/29/08

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board's proposal is response to a petition for rulemaking which requested fewer supervised hours in experience required for persons who already hold a license as a clinical psychologist and are attempting to qualify for certification as a sex offender treatment provider. The Board recommended that the regulations be amended to allow credit for supervised hours for licensed persons who are able to document that those hours were working with the sex offender population within the past ten years. The Board also recommends that certified sex offender treatment providers be required to have at least six hours of continuing education focused on the treatment of that population for annual renewal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 Psychology 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:

...

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. ...*

The specific statutory mandate for the Board to establish requirements for mandatory certification of sex offender treatment providers is found in § 54.1-3605:

§ 54.1-3605. Powers and duties of the Board.

In addition to the powers granted in other provisions of this title, the Board shall have the following specific powers and duties:

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
- 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
- 3. To designate specialties within the profession.*
- 4. To issue a temporary license for such periods as the Board may prescribe to practice psychology to persons who are engaged in a residency or pursuant to subdivision 7 of § 54.1-3601.*
- 5. To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers.*
- 6. To administer the mandatory certification of sex offender treatment providers for those professionals who are otherwise exempt from licensure under subdivision 4 of §§ 54.1-3501, 54.1-3601 or § 54.1-3701 and to promulgate regulations governing such mandatory certification. The regulations shall include provisions for fees for application processing, certification qualifications, certification issuance and renewal and disciplinary action.*
- 7. To promulgate regulations establishing the requirements for licensure of clinical psychologists that shall include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders.*

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Since courts and other institutions rely on the expertise of sex offender treatment providers to assess the mental condition of persons who are deemed as sex offenders, it is necessary to have a sufficient number of certified practitioners available, but also to ensure that those persons are competent, knowledgeable and current in that field. The purpose of the amended regulation is to recognize the post-degree clinical supervision an applicant has already attained for a mental health license if the hours were in the treatment and assessment of sex offender clients.

Additionally, a practitioner who holds certification will be required to obtain six hours within the annual renewal period in topics related to the provision of sex offender treatment. The field of sex offender treatment is constantly evolving with are new developments, research and theories; it is essential for the health and safety of the public that persons charged with treating these clients are current in those developments to provide competent care for their clients and have sufficient knowledge to advise courts and others of the potential danger a person may pose to the public.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

An Ad Hoc Committee appointed by the Board reviewed the petition for rulemaking to amend the regulations to ease the supervision requirement for licensed individuals attempting to become certified as sex offender treatment providers (SOTP) to allow some of the licensure experience to be used to satisfy supervised practice requirements for the certification.

Based on the Committee recommendations, the Board adopted the following:

- Allow licensed professionals to count toward requirements for certification as a SOTP the hours of supervised experience in working with the sex offender population within the past 10 years by a licensed professional who will attest that he provided supervision only for those sex offender treatment services which he is qualified to render.
- Require that certified SOTPs complete six hours of continuing competency related to sex offender treatment each renewal year. The six hours required to satisfy the CE requirement for SOTP certification may be hours that are also counted toward completion of a CE requirement for another license, provided the hours are clearly directed at the diagnosis and treatment of the sex offender population.

Given that the sex offender population is potentially more dangerous to the health and safety of the public than the usual client or patient under the care of a mental health provider, the Board has determined that additional education and training is essential for public protection. However, a licensed mental health provider whose training and practice has included work with that population could be credited with some of the hours of supervised experience required for

the additional certification. In addition, the demands of treating sex offenders and the expansion of knowledge in the field were considered in review of this regulation, and the Board concluded that some requirement for continuing education was necessary.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

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- 1) There are no disadvantages to the public. The changes will not significantly affect the quality or amount of supervision one receives in gaining experience in a mental health field but will allow a person to credit experience for one license towards SOTP certification. Likewise, continuing education obtained for licensure as a psychologist, counselor, social worker, etc. will count toward the SOTP certification renewal if directed towards treatment of the sex offender population. The public should benefit from both changes to encourage more certified practitioners who are current in their knowledge and skills.
 - 2) There are no advantages or disadvantages to the agency or the Commonwealth.
 - 3) There is no other pertinent matter of interest related to this action.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. B) There are no on-going costs related to this proposal.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the</p>	<p>The individuals likely to be affected by the regulation are those persons certified by the Board</p>

<p>regulation</p>	<p>of Psychology as sex offender treatment providers and those individuals who may apply for certification</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The persons affected by the regulatory action are those who hold an active certification and will be subject to CE requirements for renewal of certification. Most work for governmental institutions and would not be considered small businesses. There are currently 358 persons who hold SOTP certification.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There is no projected cost for certificate holders who also have a license for compliance with amended regulations. Hours required for renewal of a license would also count for renewal of the SOTP certification, provided the subject matter dealt with treatment of that population. Approximately 77% of certificate holders already hold a license. For those who only hold the SOTP certificate, obtaining the required six hours should not be costly. Providers of CE approved by other boards offer on-line courses, and there is no requirement for the SOTP CE to be live. The Annual Training Conference on the Management and Treatment of Sex Offenders in Charlottesville, VA cost \$100 for registration and offers 14 hours of continuing education.</p>

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.

The Board considered its response to a petition for rulemaking to allow credit for supervised hours in working with the sex offender treatment population. It held discussion about the subject of the petition but felt it was lacking the necessary expertise to determine whether the regulation should be amended accordingly. While immediate action on the petition was denied, the Board voted to appoint an ad hoc committee, chaired by a Board member, to review the supervision regulations for certification. Members of the committee included persons who hold certification as sex offender treatment providers, including one former board member who assisted in the development of the original regulations. The Committee recommended the issuance of a Notice of Intended Regulatory Action on the subjects of supervised experience and continuing education.

The initial recommendation was to use a five-year time period within which 100 hours of face-to-face supervision had been obtained. Chair of the Ad Hoc Committee recommended that the Board consider extending the time frame to supervision within the past 10 years to benefit more persons who might seek sex offender treatment certification.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published on June 11, 2007 with comment until July 11, 2007. There was no comment on the NOIRA, but there was input from members of the Ad Hoc Advisory Committee on the draft regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This reduction in supervisory requirements will allow a few additional people to obtain sex offender certification, which will in turn make more practitioners available to the judicial and mental health systems. The availability of qualified practitioners is beneficial to families that have been impacted or could potentially be impacted by sex offenders in their communities.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
50	n/a	Sets out the experience and supervision requirements for an applicant seeking certification as a sex offender treatment provider	<p>Allows an applicant who has obtained the required post-degree clinical experience for a mental health license within the past ten years to receive hours of credit for supervision experience for the sex offender treatment certification, if the applicant can document that the hours were in the treatment and assessment with sex offender clients; and the supervisor for the face-to-face hours can attest that he is licensed and qualified to render services to sex offender clients.</p> <p><i>If post-degree clinical experience hours have been supervised by a supervisor qualified to provide sex offender treatment and if the hours with sex offender clients were within the past 10 years (hours used to obtain another mental health license), the Board believes it is unnecessarily burdensome to require an</i></p>

			<p><i>additional 2,000 hours of experience with 100 hours of face-to-face supervision. This reduction in supervisory requirements will allow a few people to obtain sex offender certification, which will in turn make more practitioners available to the judicial and mental health systems.</i></p>
80	n/a	Sets out the requirement for annual renewal of certification	<p>Adds a requirement for six hours of continuing education related to the provision of sex offender treatment. CE that is approved by another licensing board or by the Association for the Treatment of Sexual Abusers is acceptable to meet the requirement. Hours used to satisfy renewal requirements for another license may satisfy the six-hour requirement for sex offender certification.</p> <p><i>The Board believes that anyone who holds this certification and is treating this population should direct some of his CE hours to the field of sex offender treatment.</i></p>