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Proposed Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 140-20
Regulation title	Regulations Governing the Practice of Social Work
Action title	Amendments to Requirements for licensure by Examination, Supervision and Standards of Practice
Document preparation date	May 3, 2007

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.

Proposed regulations were adopted by the Board of Social Work to require registration of supervision by persons preparing for licensure in social work, regardless of the practice setting, to allow for group supervision, and to specify the professional training necessary for a licensee to serve as a supervisor. Amendments will also allow a bachelor's degree graduate to take the examination for a licensed social worker prior to completing 3,000 hours of work experience. Finally, the standards of professional conduct are revised to update the language, address conduct seen in disciplinary cases and provide consistency with other behavioral health professions.

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 Social Work 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 statutory authority for licensure and regulation of social workers is found in Chapter 37 of Title 54.1 of the Code of Virginia.

§ 54.1-3705. Specific powers and duties of the Board.

In addition to the powers granted in § 54.1-2400, 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. [Expired.]*

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.

The Board is amending existing regulations to address several issues that have arisen. First, the Standards of Practice for Social Work, relating to professional conduct and grounds for disciplinary action need to be updated for consistency with current practice and with the other behavioral sciences. Specific standards for informed consent, continuation of services, confidentiality of patient records, and improper relationships with clients are intended to protect the health and safety of those who are vulnerable in the care of a social worker providing counseling or case management.

Second, the Board's amendments will allow for applicants for Licensed Social Worker (LSW) to take the licensure examination upon completion of the required education and prior to the completion of the required supervised experience for applicants with a Bachelor of Social Work degree. Licensed Social Worker applicants possessing a Masters of Social Work degree currently are not required to fulfill the supervision requirement and will continue to be exempt from this requirement under the regulatory change.

Third, the Board has amended the supervision section to accept "group supervision" as a method of obtaining the required hours necessary for licensure. The language would specify a limitation of six people as the maximum size in a group and that only half of the required hours could be gained through group. The professional training necessary to provide supervision is also specified to ensure adequate preparation for safe and competent practice by supervisees and later licensees.

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.)

Amendments to standards of practice.

The Board has amended section 150 on professional conduct and section 160 on grounds for disciplinary action or denial of issuance of a license, both of which fall under Part VI Standards of Practice in the board's regulations. Amendments address issues such as: standards for therapy not rendered in face-to-face settings, information which should be provided to clients at the initial sessions, informed consent, appropriate collaboration with other treating professionals, the requirement to maintain adequate information in client records, and the prohibition against engaging in relationships with clients, supervisees, students and those in collateral relationships with clients (such as spouses or other relatives). The proposed regulations will provide a more consistent and up-to-date basis for disciplinary action which will better serve to protect the health and safety of the client and provide clearer guidance for the practice of social workers.

Amendments to examination requirement

The Board adopted amendments to allow Bachelors education (BSW) applicants to take the basic level examination for Licensed Social Worker (LSW) designation prior to completion of 3,000 hours of post-bachelor's experience required in 18 VAC 140-20-60 B2a.

The proposed change will not reduce the requirements for LSW licensure nor will it result in applicants obtaining licensure without completing all existing requirements. This change will allow applicants to take the required examination upon completion of the educational requirements as set out in 18 VAC 140-20-60. The rationale for proposing this change is threefold. First, the Virginia Chapter of the National Association of Social Workers (NASW-VA) approached the Board about making this change. NASW-VA believes that by allowing students to take the examination upon graduation, more will opt to take it. Second, and closely

related to the first reason, the Board has heard from several students that they would prefer to take the examination shortly after graduating while the information is still fresh in their minds. It takes roughly two years to obtain the 3,000 hours of supervision. The basic examination is primarily non-clinical in nature, therefore obtaining the 3,000 hours of supervision does not improve the candidates chances of successfully passing the examination. Third, this change would bring Virginia in line with the surround jurisdictions (District of Columbia and Maryland) in terms of requirement for basic level licensure. Candidates for LSW level licensure are able to sit for the required examination in those jurisdictions upon completion of the necessary educational requirements.

Amendments to supervision

Currently, an applicant for licensure as a clinical social worker must have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services or the equivalent in part-time experience. A minimum of one hour of individual face-to-face supervision must be provided each week for a total of at least 100 hours. The regulations do not specify that group supervision is allowed, but it is already being utilized by persons obtaining the required 3,000 hours. The regulatory change will clarify that group supervision is a method for obtaining the hours, but there would be a limitation on the number of persons who could constitute a group and would require that no more than half the hours could be gained in group supervision. While supervisors are expected to be appropriately qualified by their education and experience to provide supervision, there was no specific requirement. The proposed rules will specify that a supervisor must complete a 3-hour graduate course in supervision or at least 14 of the hours of continuing education required for renewal toward courses in supervision.

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.

1) The primary advantage to the public would be greater specificity and guidance about the ethical and professional standards of practice to discourage a social worker from acting inappropriately or providing substandard care for a client. Those persons seeking social work services will be better protected by specific rules on informed consent, client confidentiality, continuation of care, and dual relationships.

In addition, the requirement for registration of supervision during a residency, regardless of the practice setting, will improve the oversight and accountability for person providing services during a period of gaining practical experience. There is an advantage to consumers since the hours and format for supervision are specified to ensure the service being provided by the

resident is safe and effective. There are no disadvantages to consumers of mental health services.

2) There are no disadvantages to the agency or the Commonwealth. By specifying the professional training required for a supervisor, there will be less ambiguity in the regulation, which may encourage compliance.

3) There are no other matters of interest.

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. There are no additional costs to the agency for conducting informal fact-finding by a subordinate.</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 regulation</p>	<p>The entities that are likely to be affected by these regulations would be persons licensed by the Board.</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 agency has no estimate of the number of entities affected by the changes to examination requirements for LSW applicants. Changes to the standards of practice could potentially affect all licensees. Currently, there are: Licensed clinical social workers (LCSW) 4805 Licensed social workers (LSW) 379 There is no estimate of the number of small businesses affected. Only LCSW’s can practice autonomously, so many in that group would practice in a small business.</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>The only projected costs would be the \$25 fee for registration of supervision for those residents in exempt settings who currently are not required to register supervision with the Board. The specified training for supervisors could be 14 hours of</p>

	<p>continuing education within the past five years prior to registration of supervision; the current requirement for renewal of licensure is 30 hours each biennium. No licensee would incur additional costs for meeting the proposed requirement; he or she would have to direct some of his continuing education to the subject of supervision in order to qualify as an approved supervisor.</p>
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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.

In January 2005, the Board of Social Work created an Ad Hoc Committee to conduct an in-depth review of the Board’s Standards of Practice. This Committee was convened as a result of the Board Chair’s seven-year history of conducting disciplinary hearings during which board members came to believe that the Standards did not adequately address many of the inappropriate practice situations or failed to adequately provide ethical guidance in certain situations. As a result of the perceived deficiencies, the Ad Hoc Committee, consisting of board members, the Executive Director of the Virginia Chapter of the National Association of Social Work, and two members of the Clinical Society of Social Work met to review pertinent professional literature, standards for Counseling and Psychology Boards, standards of other state social work boards, as well as, disciplinary orders from the Board of Social Work over the past three years.

In the initial phase of considering changes to the Standards, there was consensus among the three behavioral science board (Counseling, Psychology and Social Work) that the regulations for all licensed therapists should be very similar among the helping professions. Consequently the three boards agreed to review the Standards, being mindful of the need to have similar requirements among the Behavioral Science Boards.

The Ad Hoc Committee recommended that the Board consider amendments that would eliminate inconsistencies in ethical standards among mental health professions, modify outdated standards that are unresponsive to current practices, and clarify standards that have been somewhat confusing to licensees.

As an alternative to changes in the Standards of Practice section, the Board considered retaining existing language. This alternative was not accepted because inconsistencies in the standards of practice may not adequately protect the today's consumer against unprofessional practices of the professionals regulated by this Board. For the most part the current standards of practice relate to business related aspects of the practice, not the clinical treatment aspect of the practice.

As an alternative to change in examination requirements for Licensed Social Workers, the Board considered retaining existing requirements and continuing to require that bachelor's level applicants complete the required supervision prior to taking the basic examination. This

alternative was not accepted due to the diverse consumer groups who have requested this change. A diverse group consisting of: applicants, academics, and the National Association of Social Workers (NASW).

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 February 5, 2007 with comment received until March 7, 2007. There was no public comment received during that period.

Family impact

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

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

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.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Establishes definitions for words and terms used in regulation	<p>Adds a definition of face-to-face supervision to clarify that it means the physical presence of the individuals involved.</p> <p><i>A definition is necessary to ensure clarity about the requirement for hours of "face-to-face" supervision, which cannot be achieved electronically or subsequently.</i></p> <p>Revises the definition of "supervision" to more accurately reflect the relationship and expectations.</p> <p><i>The revised definition was taken from the Association of Social Work Boards Model Act.</i></p>
20	n/a	Sets fees for the	Eliminates a one-time fee that was only effective

		professions	from June 2003 to June 2005 and has now expired.
40	n/a	Sets out the requirements for licensure by examination for a licensed clinical social worker (LCSW)	Requirements for a LCSW are separated from those for a LSW, so this section is amended to only refer to the LCSW. Also, the requirement for submission of an application 90 days prior to the date of the written examination is eliminated because the examination is now computerized and offered continuously.
50	n/a	Sets out the education & experience required for a LCSW	<p>Subsection B</p> <ul style="list-style-type: none"> Changes the requirement for supervision to require registration with the Board prior to gaining experience in any setting (exempt or non-exempt). <p><i>Proposal would make social work similar to other behavioral health licenses in which all supervised experience must be registered (proposed in Counseling, effective in Psychology). By registering supervision, the trainee can be assured that the requirements for supervision have been met and the hours will be acceptable for licensure.</i></p> <ul style="list-style-type: none"> A provision is added to allow persons who did not register but began supervision prior to the effective date of the regulations up to four years to complete the hours. Eliminates the requirement that all 100 hours of face-to-face supervision must be individual but permits no more than 50 of the 100 to be in group supervision with no more than 6 persons being in a group. <p><i>The amendment will ease the burden and cost of the supervision requirement by allowing up to half of the face-to-face supervision to be in a group, but there is a limitation on the size of the group as necessary for adequate supervision to take place.</i></p> <ul style="list-style-type: none"> Allows the Board to consider alternatives for the supervision requirements in hardship cases such as disability or inaccessibility. <p>Subsection C</p> <ul style="list-style-type: none"> Clarifies that a supervisor must hold a current, unrestricted license and have 3 years of post-licensure experience in clinical social work. <p><i>The current requirement of five years post Masters does not ensure that the supervisor has had as much as 3 years of independent (non-supervised) practice, which the Board believes is important for adequate and safe supervision of someone else.</i></p> <ul style="list-style-type: none"> Adds a competency requirement for training in supervision, consisting of a 3-hour graduate course or at least 14 hours of CE immediately preceding registration of supervision. <p><i>In disciplinary cases, the Board has seen evidence of inadequate supervision in which a supervisor did not know or understand his role in ensuring the supervisee's knowledge and skills to practice in an ethical and competent manner. A requirement for</i></p>

			<p><i>some professional training in supervision would be consistent with other behavioral health professions. LCSW licensees are required to obtain 30 hours of CE every two years, so this would specify that 14 hours in five years would be devoted to learning the techniques and responsibilities of supervision.</i></p> <ul style="list-style-type: none"> • Currently, supervision between family members is not permitted. Since many persons have a dual relationship with someone who is not a member of his immediate family, the prohibition is extended to include those persons. <p>Subsection D The changes are technical and not substantive. The current subsection D is deleted because it refers to supervision in exempt settings, and the proposed regulations would make no distinction between settings.</p>
n/a	51	n/a	<p>Established the requirements for licensure as a social worker (LSW) The change in the proposal is to allow persons who complete the education required for the LSW license (a bachelor's degree) to take the examination immediately after graduation and before their supervised experience. The licensure requirements have not been changed, just the sequence. <i>The rationale for proposing this change is threefold. First, the Virginia Chapter of the National Association of Social Workers (NASW-VA) approached the Board about making this change. NASW-VA believes that by allowing students to take the examination upon graduation, more will opt to take it. Second, and closely related to the first reason, the Board has heard from several students that they would prefer to take the examination shortly after graduating while the information is still fresh in their minds. It takes roughly two years to obtain the 3,000 hours of supervision. The basic examination is primarily non-clinical in nature, therefore obtaining the 3,000 hours of supervision does not improve the candidates chances of successfully passing the examination. Third, this change would bring Virginia in line with the surround jurisdictions (District of Columbia and Maryland) in terms of requirement for basic level licensure.</i></p>
60	n/a	Sets the education and experience requirements for licensed social worker (LSW)	<p>New subsection B – clarifies that an applicant with a master's degree is not required to document supervised experience to be a LSW. New subsection C</p> <ul style="list-style-type: none"> • Requires registration of supervision regardless of the setting (same as LCSW) but allows someone who has not registered four years to complete supervised hours of experience. • Allows a person with a bachelor's degree and 3 years of post-licensure experience to provide supervision.

105	n/a	Sets the requirements for continuing competency including the hours to be obtained from approved sponsors	Subsection B mistakenly states that hours may be obtained in “three” categories, but there are only <u>two</u> categories, so the error is corrected in the proposal.
140	n/a	Establishes committees to assist in evaluating professional qualifications	This section is eliminated as outdated and unnecessary. The committees are not used to evaluate the mental or emotional competency of an applicant or licensee. If such an evaluation is required, it would be performed by an expert, not a committee of the board.
150	n/a	Establishes the standards for professional conduct	<p>Subsection A is added to specify that protection of the public should be the primary guide in all professional activities and that standards set in regulation are applicable regardless of the delivery method.</p> <p>Subsection B changes are as follows: #1 is deleted because it is subsumed in subsection A. New #1 – Amended to include justification for services rendered on behalf of a client in addition to services to a client. New #2 – Added a requirement for continuation of care when services must be interrupted or terminated. <i>Consistent with Counseling and Psychology regulations, language is proposed to require that the licensee make arrangement for client care in cases of practitioner absences or termination.</i></p> <p>New #7 – Added a requirement for written informed consent about the risks and benefits of services and limitations on confidentiality. <i>An expansion of the current requirement for informed consent in #11. Consistent with Counseling and Psychology regulations, language is proposed to ensure that clients are appropriately informed about the services provided and about the legal requirements for reporting in situations where the client may be a danger to himself or others.</i></p> <p>#9 and #10 are deleted because they are revised and restated in other sections.</p> <p>New #10 – Added a requirement for collaboration of other health and mental health providers who are concurrently providing services, if treatment requires collaboration and if the client has consented. <i>Similar to Counseling regulations, the practitioner should always coordinate care if it is determined that the client is being treated by other health or mental health practitioners and if the client agrees to the coordination.</i></p>

		<p>#11 – Deleted; rule expressed in #7.</p> <p>New #11. Added a requirement for the social worker to refrain from undertaking any activity in which one’s personal problems are likely to lead to inadequate or harmful services. <i>Identical to Psychology regulations, the requirement is necessary to protect clients and the validity of the client/practitioner relationship.</i></p> <p>New # 12. Added a requirement to recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved. <i>Identical to Counseling regulations</i></p> <p>Subsection C sets out requirements for client records, including compliance with provisions of § 32.1-127.1:03.on health records privacy.</p> <p>New #1 requires licensees to maintain written or electronic clinical records for each client to include identifying information and assessment which substantiates diagnosis and treatment plans. Each record must include a diagnosis and treatment plan, progress notes for each case activity, information received from all collaborative contacts and the treatment implications of that information, and the termination process and summary. <i>Similar to Counseling regulations, the required elements of a client record are necessary to ensure competent, safe treatment and for a complete history of care provided by the practitioner.</i></p> <p>New #2 requires that the social worker maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records which are no longer useful in a manner that ensures client confidentiality. <i>Similar to requirement for licensees of the other behavior health boards and of other health regulatory boards. Addresses situations that have been problematic in disciplinary cases.</i></p> <p>New #3 requires licensees to disclose or release records to others only with clients’ expressed written consent or that of their legally authorized representative or as mandated by law. <i>Consistent with provisions of § 32.1-127.1:03 and other regulations.</i></p> <p>New #4 requires that they ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third</p>
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		<p>party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations. <i>Identical to provision in Counseling regulations.</i></p> <p>New #5 requires licensees to maintain client records for a minimum of six years or as otherwise required by law from the date of termination of the therapeutic relationship with the following exceptions:</p> <ul style="list-style-type: none"> a. At minimum, records of a minor child shall be maintained for six years after attaining the age of majority or ten years following termination, which ever comes later. b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time. c. Records that have been transferred to another mental health professional or have been given to the client or his legally authorized representative. <i>Rules on maintenance of records are modeled after those adopted by the Board of Medicine for its licensees and are similar to those for Psychology and Counseling. Most social workers have assumed that they were required to keep client records indefinitely, so a definitive time frame is less burdensome.</i> <p>New subsection D sets out the rules in regard to dual relationships and replaces the current rule in #9:</p> <ol style="list-style-type: none"> 1. Not engage in a dual relationship with a client or a former client that could impair professional judgment or increase the risk of harm to the client. (Examples of such a relationship include, but are not limited to, familial, social, financial, business, bartering, or a close personal relationship with a client.) Social workers shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs. 2. Not have any type of sexual intimacies with a client or those included in collateral therapeutic services, and not provide services to those persons with whom they have had a sexual relationship. Social workers shall not engage in sexual intimacies with a former client within a minimum of five years after terminating the professional relationship. Social workers who engage in such a relationship after five years following termination shall have the responsibility to examine and document thoroughly that such a relationship did not have an exploitive nature, based on factors such
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			<p>as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a social worker does not change the nature of the conduct nor lift the regulatory prohibition.</p> <p>3. Not engage in any sexual relationship or establish a therapeutic relationship with a current supervisee or student. Social workers shall avoid any non-sexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student, or the potential for interference with the supervisor's professional judgment.</p> <p>4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.</p> <p>5. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the social worker in his professional capacity.</p> <p><i>The specific provisions regarding dual relationships are essential for public protection because those relationships, in which the treating practitioner exploits his position, either sexually or non-sexually, are the most common complaints leading to disciplinary action for behavioral health practitioners. The regulations were developed in response to situations addressed in disciplinary proceedings and are consistent with other behavioral health professional. The current time limit on the prohibition for dual relationships with former clients is two years, but the Board felt that was an insufficient amount of time. There was support for following the Model Laws for ASWB that recommend an indefinite prohibition, but the Board agreed to be consistent with Counseling rules for five years.</i></p>
160	n/a	Sets out grounds for taking disciplinary action	<p>18VAC140-20-160. Grounds for disciplinary action or denial of issuance of a license.</p> <p><i>The amended regulation expands the actions a board may take if there are grounds for disciplinary action to include: refuse to admit an applicant to an examination; refuse to issue a license to an applicant; or reprimand, impose a monetary penalty, place on probation, impose such terms as it may designate, suspend for a stated period of time or indefinitely, or revoke a license. All such actions are currently available to the Board under the general authority of health regulatory boards, but were not specified in the regulations.</i></p>