

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

**DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF AUDIOLOGY & SPEECH-LANGUAGE PATHOLOGY
18 VAC 30-20-10 et seq.**

Regulations Governing the Practice of Audiologists and Speech-Language Pathologists

The Board of Audiology & Speech-Language Pathology is requesting permission to publish a Notice of Intended Regulatory Action to consider amending its regulations to require some specific evidence of continued competency for those seeking renewal of their licenses. The Board will also consider amendments to establish an inactive licensure status and to set the requirements for reactivation of such a license.

A. LEGAL AUTHORITY FOR REGULATION

18 VAC 30-20-10 et seq.: Regulations Governing the Practice of Audiologists and Speech-Language Pathologists was 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 establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively 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 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.*

In addition to § 54.1-2400 (cited above), the Board is also authorized by § 54.1-103 to specify additional training or conditions for practitioners seeking renewal of licenses.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. POTENTIAL ISSUES TO BE ADDRESSED

The issues which will be addressed by the Board in the development of proposed regulations include the following:

- The most essential issue is the determination of what is the least burdensome requirement which will provide the necessary evidence of continued competency for the practitioner seeking renewal of licensure. To make that determination, the Board must consider the cost and availability of continuing education courses or activities, the type and amount of courses or activities which are necessary for assurance of competency, and the potential value of any continuing learning for the delivery of health care to consumers.
- In addition to determining the type and amount of continuing competency hours which are essential, the Board must also determine whether or not those hours are to be approved or accredited by the Board or by an independent professional body. For example, approval of hours by the American-Speech Language-Hearing Association (ASHA) would assure that sponsors of programs or activities have met strict administrative and content criteria, but the Board would need to be sure that hours could be obtained by all of its licensees at a reasonable cost of time and money.
- Along with the establishment of continuing competency requirements for renewal, the Board will consider the creation of an inactive licensure status. The issues which must be addressed include the necessity for an inactive license, the proposed fee for renewal or reactivation of such a license, and the conditions which would need to be met to ensure the competency of an inactive licensee to return to active practice.

No proposed regulations have been drafted because the Board has determined that there should be an opportunity for public comment from the Notice of Intended Regulatory Action before it proceeded with any regulatory action. Discussions about the need for continuing competency requirements have taken place at meetings of the Board and of the Speech-Language Hearing Association of Virginia, so many licensees are aware of and supportive of the Board's consideration of new requirements.

C. REASONING FOR CONTEMPLATED REGULATION

At a strategic planning retreat in 1998, the Board adopted a Mission Statement which says: “The Mission of the Board of Audiology and Speech-Language Pathology is to protect the health, safety and welfare of the consumer by licensing qualified individuals and by working to assure the quality of care, enforce compliance with regulations and statutes governing the practice, and promote the integrity of the professions.” Among the obstacles to its achieving its mission, the Board identified: no standard for continuing competency of practitioners; changing technology and the need for the Board to be able to respond; the demand for a reduced level of care to the lowest common denominator; and a trend toward multi-skilling.

The Code of Virginia specifically authorizes the Board to establish requirements for relicensure which will assure the continuing competency of the practitioners it licenses. As the practices of audiology and speech-language pathology have evolved and changed, the minimal competencies that were evidenced by completion of requirements for initial licensure may no longer be adequate.

In the professions of audiology and speech-language pathology, the knowledge base has continued to grow, but the growth in utilization of technology has been even more dramatic. Educational programs have been modified to accommodate changes in practice and to incorporate newer technology, but those who currently hold licensure may not be keeping up with those changes and may not be offering the consumers of the Commonwealth the most competent and safest care.

In addition, the economic demands of third-party payers have led to an increased use of assistive personnel in the practices of audiology and speech-language pathology. With such usage, there are new demands on the licensed professionals to make evaluative judgements on which tests and procedures can be safely delegated to these unlicensed, unregulated persons. There is a need for continuing education in the delegation of tasks to such persons who are treating consumers with disabilities who are being rehabilitated from disease or injury.

Therefore, the Board now finds that it is essential to establish some evidence of continuing education and/or continued competency as a condition for renewal of licensure in order to assure the public of the continuing competency and safety of its practitioners.

For some practitioners who are now retired or are practicing out of state but who wish to retain their Virginia license, the necessity of acquiring continuing education would result in an unnecessary burden and expense. The Department sought legislation, which was included in the Governor’s legislative package for the 1998 General Assembly, to authorize the establishment of an inactive license.

The Board is now authorized to develop and propose regulations for inactive licensure to include a fee for such a license and any remedial education or professional activity it deems necessary to assure that the practitioner is prepared to return to active practice with minimal safety and skill.

D. ALTERNATIVES CONSIDERED

To ensure that the proposed requirements are reasonable and not overly burdensome, the Board will appoint a Task Force to include members of the Speech and Hearing Association of Virginia (SHAV) and persons representing various types of practice in varying parts of the state in order to address the issues noted above in the development of draft regulations. The Board will also provide opportunity for written comment and for public testimony on the proposals as they are developed.

Continuing education is currently required by 36 other states with one state in the draft stage of developing its regulations. (See attached chart.) In the course of developing regulations for licensees in Virginia, the Board will consider requirements in those other states, will consult with other boards to determine if they consider their requirements inadequate or excessive, and will determine practicality and availability of such requirements. It will also review offerings from educational institutions, state and national professional associations, and other sources of continuing learning courses or activities to determine which will have the effect of causing the practitioner to enhance his skills and expand his knowledge base.

For example, the American Speech-Language-Hearing Association awards qualified practitioners the Award for Continued Education (ACE) if they accrue 7.0 CEU's (70 contact hours) or the equivalent within a three-year period. While such an award might be the goal an individual practitioner might wish to attain as a measure of professional achievement, it would be excessive for the Board to place such a requirement on all licensees as a measure of minimal continued competency.

In the statutory authority of § 54.1-2400, the Board is also authorized 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.”*

Therefore, the Board will consider qualifications for requesting inactive licensure status, such as the active license must be current and unrestricted at the time of the request. In its consideration of appropriate renewal fees, the Board will consider a fee which would probably be lower than an active license fee but would continue to support the activities associated with licensure. The conditions for reactivation would likely include such requirements as continuing education hours equal to the requirement for the number of years of inactivity with a limit on the total to be acquired. In addition, the Board will consider the professional activity of practitioners who have been actively practicing in another jurisdiction while they have been inactive in Virginia.