

**PRELIMINARY DETERMINATION
NOTICE OF INTENDED REGULATORY ACTION**

**DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF MEDICINE**

***18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine,
Osteopathy, Podiatry, Chiropractic and Physician Acupuncture***

ITEM 1: LEGAL AUTHORITY FOR REGULATION

Regulations of the Board of Medicine, as listed above, were promulgated under the general authority of Title 54.1 of the Code of Virginia.

§ 54.1-2400 establishes the general powers and duties of health regulatory boards including the authority to promulgate regulations in accordance with the Administrative Process Act (#6) and the authority to establish qualifications for licensure (#1) and to examine or cause to be examined applicants for licensure (#2).

§ 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.*

Specific statutory authority for regulations on licensure examinations.

§ 54.1-2913. Examinations.

The Board shall prescribe regulations governing the content, administration and grading of examinations for each branch of the healing arts.

The Board shall ensure that the identity of an applicant corresponding to a given examination paper is not known to members of the Board until after the applicant has been granted or refused a license.

§ 54.1-2913.1. Acceptance of other examinations.

In lieu of any or all parts of the examinations prescribed by the Board for a license to practice medicine, osteopathy, podiatry or chiropractic, the Board may:

1. Accept a certificate issued by either the National Board for the appropriate branch of the healing arts or a state board prior to 1970 attesting the satisfactory completion of an examination given by that board if, in the opinion of the Board, the substituted examination material is substantially equivalent to the material for which it is substituted, and the passing grades are in each instance the equivalent of the grades required to be made on the corresponding examinations administered by the Board.

2. Accept a certificate issued by a state board during or after 1970 attesting to the applicant's satisfactory completion of all requirements to practice medicine, osteopathy, podiatry or chiropractic in that state, if the applicant has a current and unrestricted license to practice in another state and a current specialty certificate acceptable to the Board.

ITEM 2: ISSUES RELATED TO THE REGULATION

The issue that has arisen involves the requirement in 18 VAC 85-20-140 E 2, in which applicants for licensure as a medical doctor are required to provide evidence of passing Steps 1, 2, and 3 of the United States Medical Licensing Examination (USMLE) within seven years. Recently, the Board has received applications from two highly qualified individuals who passed Steps 1 and 2 prior to 1992 while they were attending medical school but then went on to acquire other advanced degrees (Ph.D.) before they completed their medical education. USMLE does not allow a candidate to take Step 3 until after graduation from medical school. Since the current regulation did not take effect until August of 1998, the Assistant Attorney General who provides counsel has advised the Board that the seven-year rule was not in effect when these two applicants began the examination process, and therefore it is not applicable for them.

What this situation has pointed out is that the seven-year rule, while well-intended, may not be necessary or advisable. In the future, it may prevent other well-qualified individuals from becoming licensed and practicing medicine in the Commonwealth. The Board would like to address the issue as soon as possible to preclude someone from being disqualified for licensure based on that section of the regulations.

In addition, the Federation of State Medical Boards has notified the Board of Medicine that, after December 1, 1999, the USMLE program will no longer accept hybrid combinations as a prerequisite to sit for Step 3. (See copy of letter attached) While it is the Federation that has changed its rules and not the Board, regulation 18 VAC 85-20-140 E 3 may be misleading to applicants. It states that applicants for licensure in Virginia are allowed to take a combination of USMLE and the Federation Licensing Examination (FLEX). If applicants are no longer allowed by USMLE to take a combination of examinations, the Board may want to amend its rule to prevent an applicant from being confused and misled.

ITEM 3: SPECIFIC REASON FOR PROPOSED REGULATION

The Board of Medicine is seeking to publish a Notice of Intended Regulatory Action in order to address two issues related to the United States Medical Licensing Examination (USMLE).

When the Board was reviewing its regulations pursuant to Executive Order 15(94), it considered a recommendation from the Federation of State Medical Boards that seven years be established as the required time frame in which to complete all steps of the examination. It was thought that some time limit should be established to prevent persons from unnecessarily dragging out the process. Acting on the Federation's recommendation, the Board adopted the seven-year rule in the promulgation of amended regulations, which became effective on August 5, 1998. Now the Board is aware of at least two applicants for whom the seven-year rule could preclude licensure and is concerned that others may get caught in the same situation.

When the USMLE came into existence in 1992, it replaced the FLEX and National Board examinations. The Federation believes that USMLE addresses current medical knowledge and therefore is a more valid examination. During the transition from one examination to the other, the Federation allowed a candidate who had earlier taken the FLEX examination to sit for USMLE Step 3. Now that seven years has passed, the Federation believes that all candidates should have completed the process by December 1, 1999, so it will not accept a combination of examinations after that date. They have informed the Board of that fact and advised that any pending candidates should be processed as soon as possible in order to meet their deadline.

ITEM 4: ALTERNATIVES CONSIDERED

In order for the Board of Medicine to address the issues related to the USMLE examination, there is no non-regulatory solution to be considered. Requirements for applicants to sit for the licensure examination are set forth in regulation, which must be amended in order for there to be a change in policy.

By virtue of a decision about eligibility from the Board's counsel, candidates for the Step 3 examination who took Steps 1 and 2 prior to August 5, 1998 will continue to fall under the regulation which was in effect before 1998. They will continue to be eligible under the old regulation. While the Board is able to address the situation for the present, it would like to reexamine the rule and consider its modification or elimination.

The decision by the Federation to stop accepting combination examinations (FLEX and USMLE) after December 1, 1999 was not favored by the Board. Board staff has questioned the ruling of the Federation but has been told that it is a final decision of the Federation's Board. Therefore, even if the rule in Virginia is to allow an applicant to take a combination of examinations, the Federation will not accept a candidate applying to sit for USMLE Step 3 who has taken FLEX or National Boards instead of Steps 1 and 2. In order not to mislead applicants, the regulation in Virginia should probably be modified and clarified to follow the language of the Federation.

For the purpose of acting on applicants who have previously been licensed in other states or for acceptance of applicants during the transition from combination examinations to all USMLE, the Board will probably need to retain language in regulations stating its acceptance of a combination of examinations for persons who took Step 3 of the USMLE prior to December 1, 1999.