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## Fast Track Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | Board of Medicine, Department of Health Professions                   |
| <b>Virginia Administrative Code (VAC) citation</b> | 18VAC85-110-10 et seq.  |
| <b>Regulation title</b>                            | Regulations Governing the Practice of Licensed Acupuncturists         |
| <b>Action title</b>                                | Acceptance of graduates of acupuncture programs with candidacy status |
| <b>Date this document prepared</b>                 | 2/25/14   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

An amendment to section 50 will authorize the Board to license an applicant from an acupuncture program or school in candidacy status for accreditation by ACAOM if the applicant has obtained the requisite hours of didactic education and clinical training.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

ACAOM = Accreditation Commission for Acupuncture and Oriental Medicine

NCCAOM = National Certification Commission for Acupuncture and Oriental Medicine

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On February 20, 2014, the Board of Medicine adopted amendments to 18VAC85-110-10 et seq., Regulations Governing the Practice of Licensed Acupuncturists.

**Legal basis**

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

**Chapter 24 of Title 54.1** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

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

*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.*

The specific mandate to promulgate regulations for acupuncture education is found in § 54.1-2956.10 of the Code of Virginia:

*§ 54.1-2956.10. Requisite training and educational achievements of acupuncturists. The Board shall establish a testing program to determine the training and educational achievements of acupuncturists, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.*

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the amendment is to allow graduates of acupuncture programs that have candidacy status from the ACAOM to be licensed in Virginia. In order to achieve candidacy

status, a program must meet the same academic criteria as an accredited program. Accreditation is granted after a program has demonstrated a sustained level of achievement and financial stability. Graduates of candidacy status programs take the same licensing examination as accredited programs and pass the examination at a similar rate. Therefore, there is evidence that such graduates have adequate education and training to assure minimal competency for safe and effective practice as licensed acupuncturists.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

The Board received a recommendation from the Advisory Board on Acupuncture to amend regulations by a fast-track action in order to accelerate the less restrictive change to the benefit of applicants and acupuncture schools opening in Virginia. Prior to adoption, the change was vetted with representatives of the NCCAOM and the Acupuncture Society of Virginia to ensure that it was acceptable and not controversial.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

An amendment to section 50 will authorize the Board to license an applicant from an acupuncture program or school in candidacy status for accreditation by ACAOM if the applicant has obtained the requisite hours of didactic education and clinical training.

### 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The primary advantage of the amendment is a very modest increase in the number of applicants who will qualify for licensure in Virginia. There are no disadvantages; there is adequate education and training to assure minimal competency for safe and effective practice.
- 2) There are no advantages or disadvantages to the Commonwealth. There will be a small number of practitioners who will be able to practice in Virginia rather than going to other states.
- 3) There are no other pertinent issues.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There is no requirement more restrictive than federal requirements

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected.

**Regulatory flexibility analysis**

*Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There is no regulatory flexibility; the change is less restrictive. It will have a positive effect on acupuncture schools in Virginia, all of which are small businesses.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

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| <p><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board</p> | <p>Entities affected would be graduates of acupuncture educational programs that had candidacy status at the time of graduation.</p> |
| <p><b>Agency’s best estimate of the number of (1)</b></p>  | <p>There is no estimate of the number of applicants</p>  |

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| <p><b>entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>   | <p>who are or will be affected, but it is expected to be a small number.</p>  |
| <p><b>Benefits expected as a result of this regulatory proposal.</b></p>  | <p>A modest increase in the number of licensed acupuncturists who can provide services to patients in Virginia.</p> |
| <p><b>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</b></p>   | <p>There are no costs to implement.</p>   |
| <p><b>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</b></p>  | <p>None</p>   |
| <p><b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p> | <p>There are no projected costs.</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. 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.*

There are no alternatives that will achieve the essential purpose of the action. The requirement for accreditation of an educational program is set in regulation; it is not statutory.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

There is no impact on the family.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

| Current section number | Current requirement   | Proposed change, intent, and likely impact of proposed requirements  |
|------------------------|---|--|
| 50                     | <p>Authorizes the Board to license an applicant from an acupuncture program or school in candidacy status only if it achieves accreditation within 3 years of the applicant's graduation.</p> | <p>Authorizes the Board to license an applicant from an acupuncture program or school in candidacy status for accreditation by ACAOM if the applicant has obtained the requisite hours of didactic education and clinical training.</p> <p><i>In October, the Advisory Board received a request from the Virginia University of Oriental Medicine to amend its requirement on graduates of schools in candidacy status. A representative of NCCAOM, the certification commission that offers the licensing examination confirmed that graduates of candidacy. At its February meeting, the Board considered additional information from the NCCAOM about candidacy status acceptance in other states and recommended the amendment to section 50. The current regulation is problematic for newer schools, such as the ones in Virginia, and their graduates who are unable to be licensed by the Board of Medicine and are forced to seek licensure and employment outside of the Commonwealth. In order to achieve candidacy status, a program must meet the same academic criteria as an accredited program. Accreditation is granted after a program has demonstrated a sustained level of achievement and financial stability. Graduates of candidacy status programs take the same licensing examination as accredited programs and pass the examination at a similar rate. The amendment will impact graduates of the Virginia schools in candidacy status, as well as graduates of schools that are currently or were in candidacy status at the time of their graduation.</i></p> |