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Proposed Regulation Agency Background Document

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| Agency name | Board of Medicine, Department of Health Professions |
| Virginia Administrative Code (VAC) citation(s) | 18VAC85-20-10 et seq. |
| Regulation title(s) | Regulations Governing the Practice of Doctors of Medicine, Osteopathic Medicine, Podiatry, or Chiropractic |
| Action title | Licensure by endorsement |
| Date this document prepared | 7/27/17 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

The Board has proposed regulations for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements established in regulation. To be licensed by endorsement, a doctor would need to have held one current, unrestricted license in another U. S. jurisdiction or Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

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.

N/A

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.

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 Medicine 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 Code section relating to authority to issue licenses by endorsement is:

§ 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. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.*
- C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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 Board has reviewed elements of licensure by endorsement that would provide assurance of competency to practice but also considered potential disqualifiers including disciplinary actions by another state board, malpractice claims, and/or certain criminal convictions. While the Board may be able to license physicians who have had discipline, malpractice claims, or criminal convictions, it may determine that such an applicant requires a full review and would not qualify for an expedited license by endorsement. The intent is to facilitate licensure for physicians who have a demonstrated history of competent, safe practice in order to protect the health and safety of citizens of the Commonwealth who may become their patients.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The Board has proposed regulations for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements established in regulation. To be licensed by endorsement, a doctor would need to have held one current, unrestricted license in another U. S. jurisdiction or Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

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 to the public is the potential to encourage highly qualified doctors to come to Virginia for practice since the application process would be somewhat expedited by licensure by endorsement. There are no disadvantages; there would be ample evidence of competency to practice safely.
- 2) There are no advantages or disadvantages to the agency.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "*To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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.*" There is no restraint on competition as a result of promulgating

this regulation; all applicants would continue to have the same pathways to licensure, but those who are board-certified and actively practicing in another state would have a somewhat more expedited pathway.

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 are no applicable 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.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Medicine is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website

(<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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.

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| <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>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 or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.</p> |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>None</p> |
| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>Doctors of medicine, osteopathic medicine, and podiatry who want to apply for licensure in Virginia by endorsement.</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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>There is no estimate of the number who, if so qualified, may choose to apply by endorsement. The pathway of licensure by examination would still be available to any applicant.</p> |
| <p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>There are no additional cost for an application for licensure by endorsement.</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>Provides an opportunity for well-qualified physicians to obtain a license without some of the more onerous requirements of licensure by examination.</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 viable alternatives to the selection of the least burdensome and intrusive regulation, since the intent of this action is to expedite licensure for some applicants.

The Board reviewed endorsement requirements from other professions and other state boards in considering the adoption of proposed regulations. The elements of the endorsement provisions are very similar to those found in North Carolina, among others.

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.

Section 54.1-2929 of the Code of Virginia specifies that “No person shall practice or hold himself out as qualified to practice medicine, osteopathy, chiropractic, or podiatry without obtaining a license from the Board of Medicine as provided in this chapter.” There are no other regulatory methods consistent with public health and safety for establishment of qualifications for licensure to practice medicine.

Public comment

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

The Notice of Intended Regulatory Action was published on January 23, 2017 with comment requested until February 22, 2017. There was no comment, but the proposal has been discussed with the Medical Society and other interested parties during its development.

Family impact

Please assess the impact of this 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; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

| Proposed new section number, if applicable | Proposed change, intent, rationale, and likely impact of proposed requirements |
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| 141 | <p>Requirements in Section 141 for licensure by endorsement include:</p> <ol style="list-style-type: none"> 1. At least one current, unrestricted license in a U. S. jurisdiction or Canada for the five years immediately preceding application to the board; 2. Active practice, defined as an average of 20 hours per week or 640 hours per year, for five years after post-graduate training and immediately preceding application; 3. Verification that all licenses held in another U. S. jurisdiction or Canada are in good standing, defined as not currently under investigation and if lapsed, eligible for renewal or reinstatement; 4. Current certification by one of the following: <ol style="list-style-type: none"> a. American Board of Medical Specialties; b. Bureau of Osteopathic Specialists; c. American Board of Podiatric Surgery; d. Fellowship of Royal College of Physicians of Canada e. Fellowship of the Royal College of Surgeons of Canada; or f. College of Family Physicians of Canada; 5. A current report from the U. S. Department of Health and Human Services Data Bank (NPDB); and |

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| | <p>6. No grounds for denial based on provisions of § 54.1-2915 of the Code of Virginia or regulations of the board.</p> <p><i>Part IV includes the current criteria for licensure, including evidence of meeting education, experience and examination requirements. By applying for licensure by endorsement, a doctor would not be required to submit documentation of medical school education, internships, residencies, fellowships, and of passage of all examinations. For many doctors who have been actively practicing for a number of years, submission of such documentation can be quite time-consuming and burdensome.</i></p> <p><i>In lieu of education, post-graduate experience, and examination, a doctor can substitute active practice for at least five years and board certification. A doctor who is not board-certified or has not had sufficient active practice would still be able to apply as he/she does currently. Typically, applicants with less than five years of practice have access to current documentation and do not find it as burdensome to secure the evidence to satisfy requirements for licensure by examination.</i></p> <p><i>The requirement for active practice was established allow doctors who have practiced part-time or who have taken breaks in their practice to qualify. Since other qualified are being waived, it is important to have evidence of active practice to provide some assurance of continuing competency. If a doctor has been actively practicing and does not have board discipline or malpractice claims, there is a reasonable expectation of minimal competency. Even with discipline or malpractice, an applicant may still be licensed provided there are no grounds under §54.1-2915 to deny licensure.</i></p> <p><i>The listing of certifying bodies acceptable for licensure by endorsement is similar to the listing found in § 54.1-2910.1 for the physician profile. The Board has added the Canadian credentialing bodies as acceptable for endorsement.</i></p> <p><i>Some other states require disclosure of medical malpractice, but Virginia boards typically require a NPDB report, so there is independently-submitted evidence concerning a practitioner’s malpractice history.</i></p> <p><i>While the regulations only require one active, current license in another jurisdiction, the Board will also require verification of all licenses to ensure that an applicant was not revoked or suspended or allowing his license to lapse to avoid disciplinary action.</i></p> |
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